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9 and Cross-Defendant
10 CHURCH OF SCIENTOLOGY INTERNATIONAL

RECEIVED

JUN 20 1994

HUB LAW OFFICES

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF LOS ANGELES

13 CHURCH OF SCIENTOLOGY)
14 INTERNATIONAL, A California not-for-)
15 profit religious corporation;)

16 Plaintiff,)

17 v.)

18 GERALD ARMSTRONG; DOES 1 through)
20 25, inclusive,)

21 Defendant.)

22 _____)
23 AND RELATED CROSS-ACTION.)

24 _____)

) CASE NO. BC 052395
) SEPARATE STATEMENT OF
) UNDISPUTED FACTS WITH
) REFERENCE TO SUPPORTING
) EVIDENCE IN SUPPORT OF
) MOTION OF CROSS-DEFENDANT
) CHURCH OF SCIENTOLOGY
) INTERNATIONAL FOR SUMMARY
) ADJUDICATION OF GERALD
) ARMSTRONG; DOES THE
) SECOND AND THIRD CAUSES OF
) ACTION OF THE AMENDED
) CROSS-COMPLAINT
)
) DATE: Aug. 3, 1994
) TIME: 8:30 a.m
) DEPT: 30
)
) Trial Date: Nov. 7, 1994
) Disc. Cut-off: Oct. 7, 1994
) Mtn. Cut-off: Oct. 21, 1994

25 Pursuant to Code of Civil Procedure Section 437(c)(f), Cross-Defendants
26 Church of Scientology International, Church of Scientology of California, Religious
27 Technology Center, Church of Spiritual Technology, Author Services, Incorporated,
28

1 Author's Family Trust, Estate of L. Ron Hubbard, David Miscavige, and Norman
2 Starkey ("Cross-Defendants") submit this Separate Statement of Undisputed Facts
3 with Reference to Supporting Evidence in connection with their Motion for
4 Summary Adjudication of Issues. The issues to be adjudicated affect the Third
5 Cause of Action of the Verified Amended Cross-Complaint for Declaratory Relief,
6 Abuse of Process, and Breach of Contract ("Cross-Complaint"), and the supporting
7 evidence for such issues is noted below.

8 **ADJUDICATION NO. 1:** The Third Cause of Action of the Cross-Complaint
9 for Breach of Contract cannot be maintained because the conduct allegedly
10 constituting the breach is not prohibited by the Settlement Agreement.

11 **CLAIM AT ISSUE:** This adjudication, if granted, would dispose of the Third
12 Cause of Action of the Cross-Complaint for Breach of the Settlement Agreement.

13 Undisputed Material Fact

Supporting Evidence

14 1. The Mutual Release of All
15 Claims and Settlement Agreement
16 (the "Settlement Agreement") is
17 between Church of Scientology
18 International ("CSI") and Gerald
19 Armstrong ("Armstrong").

1. Exhibit A, Mutual Release of
all Claims and Settlement Agreement,
¶ 1.

20
21 2. The Settlement Agreement was
22 executed by Armstrong and his
23 attorney, Michael J. Flynn, on
24 December 6, 1986, and by CSI on
25 December 11, 1986.

2. Id. at p. 16.

26
27 3. The Settlement Agreement
28 states that it "contains the entire

3. Id. at ¶ 9.

1 agreement between the parties
2 hereto, and the terms of this
3 Agreement are contractual and are not
4 a mere recital."

6 4. The Settlement Agreement
7 states that it may be amended only by
8 a written instrument executed by
9 Armstrong and CSI.

4. Id. at ¶ 9.

11 5. The Settlement Agreement
12 states that Armstrong and CSI
13 carefully read and understood the
14 contents of the Settlement Agreement
15 and signed it of their own free will,
16 and it is the intention of the parties to
17 be legally bound hereby.

5. Id. at ¶ 9.

19 6. Under the Settlement
20 Agreement, Armstrong acknowledged
21 that he entered into the Agreement
22 freely, voluntarily, knowingly and
23 willingly, without any threats,
24 intimidation or pressure of any kind
25 whatsoever and voluntarily executed
26 the Agreement of his own free will.

6. Id. at ¶ 11.A.

28 7. Under the Settlement

7. Id. at ¶ 11.B.

1 Agreement, Armstrong acknowledged
2 that he had conducted sufficient
3 deliberation and investigation, either
4 personally or through other sources of
5 his own choosing, and had obtained
6 advice of counsel regarding the terms
7 and conditions set forth therein, so
8 that he may intelligently exercise his
9 own judgment in deciding whether or
10 not to execute the Settlement
11 Agreement.

12
13 8. Under the Settlement
14 Agreement, Armstrong acknowledged
15 that he had carefully read the
16 Settlement Agreement and
17 understood the contents of it.

8. Id. at ¶ 11.C.

18
19 9. Under the Settlement
20 Agreement, Armstrong warranted that
21 he had received independent legal
22 advice from his attorneys with respect
23 to the advisability of making the
24 settlement provided in the Settlement
25 Agreement and in executing it.

9. Id. at ¶ 18.(A).

26
27 10. Armstrong knew the provisions
28 of the Settlement Agreement did not

10. Exhibit B, Deposition of Gerald
Armstrong, June 24, 1992, at

1 prevent the Church from disclosing
2 confidential information.

160:19-162:3.

3
4 11. The Third Cause of Action of
5 the Cross-Complaint for Breach of
6 Contract alleges that the Church,
7 and/or its agents, and/or other
8 Scientology-related entities, have
9 engaged in ongoing breaches of the
10 Settlement Agreement by making
11 reference to Armstrong, (a) in
12 communications to the press, (b) in
13 filing pleadings and declarations in
14 various litigations.

11. Cross-Complaint at ¶ 71.

15
16 12. The Settlement Agreement
17 contains no provisions which prohibit
18 Cross-Defendants from making
19 reference to Armstrong in
20 communicating to the press or in
21 pleadings and declarations in various
22 litigation.

12. The Settlement Agreement,
Exhibit A.

23
24 13. Armstrong received a portion of a
25 total sum paid to his attorney, Michael
26 Flynn, in settlement of all claims of
27 Mr. Flynn's clients.

13. Verified Amended Complaint
(hereinafter "Complaint"), ¶ 13;
Answer, ¶ 13; Mutual Release of All
Claims and Settlement Agreement, ¶
3, Exhibit A.

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14. On December 11, 1986, a dismissal with prejudice was filed in the case of Church of Scientology of California v. Armstrong, Los Angeles Superior Court Case No. 420 153 ("Armstrong I").

14. Notice of Dismissal, Exhibit C.

15. At the time he entered into the Settlement Agreement, Armstrong knew that the Settlement Agreement prevented him from disclosing information concerning the Church, but that the Church was not similarly required to refrain from discussing him.

15. Exhibit B, Deposition of Gerald Armstrong, June 24, 1992, at 160 - 161; Exhibit D, Armstrong's Memorandum of Points and Authorities in Opposition to Motion for Preliminary Injunction, pp. 50 - 52.

16. The Settlement Agreement provides in Paragraph 18(B) that the parties, ". . . acknowledge that they have not made any statement, representation or promise to the other party regarding any fact material to this Agreement except as expressly set forth herein."

16. Exhibit A, Settlement Agreement, ¶ 18(B).

ISSUE NO. 2: The Second Cause of Action of the Amended Cross-Complaint for Abuse of Process must be dismissed because the alleged acts are

1 either outside the one-year statute of limitations or there is no misuse of process.

2 **CLAIM AT ISSUE:** This adjudication, if granted, would dispose of the
3 Second Cause of Action of the Amended Cross-Complaint for Abuse of Process.

4 Undisputed Material Fact

Supporting Evidence

5 17. The conduct alleged in
6 paragraphs 13, 14, 15 through 24,
7 26, 27, 29, 30, 33 through 38, 40,
8 43 through 48 and 57 of the
9 Amended Cross-Complaint ("Cross-
10 Complaint") is alleged to have
11 occurred prior to July 22, 1991.

17. Amended Cross-Complaint, ¶¶
13, 14, 15 through 24, 26 and 27,
29 and 30, 33 through 38, 40, 43
through 48 and 57.

13 18. The conduct alleged in
14 paragraphs 49, 51, and 55 of the
15 Cross-Complaint does not include
16 conduct which invoked the process of
17 any court.

18. Amended Cross-Complaint, ¶¶
49, 51, 55.

19 19. Armstrong began working for
20 attorney Joseph Yanny as a paralegal
21 on the case of Aznaran v. Church of
22 Scientology of California, et al.,
23 United States District Court for the
24 Central District of California, No. CV
25 88-1786 JMI (Ex) (the "Aznaran
26 case") on or about July 15, 1991.

19. Ex. E, Declaration of Laurie J.
Bartilson, ¶ 6; Ex. F, Declaration of
Gerald Armstrong, July 19, 1991

28 20. The only declarations filed in the

20. Exhibit E, Bartilson

1 Aznaran case which mention
2 Armstrong are:
3 a. Declaration of Laurie J.
4 Bartilson dated August 23, 1991.
5 b. Declaration of Laurie J.
6 Bartilson dated August 26, 1991.
7 c. Declaration of Lynn R. Farny
8 dated August 26, 1991.
9 d. Declaration of Laurie J.
10 Bartilson dated September 3, 1991.
11 e. Declaration of August
12 Murphy dated September 4, 1991.

Declaration, ¶ 9, and Exhibits 1 - 5
thereto.

14 21. Armstrong filed declarations in
15 the Aznaran case on August 26, 1991
16 and September 3, 1991, which
17 discussed his alleged experiences in
18 the Church.

21. Exhibit E, Declaration of Laurie J.
Bartilson, ¶8.

20 22. The Settlement Agreement
21 provides that the Los Angeles
22 Superior Court has continuing
23 jurisdiction to enforce the Settlement
24 Agreement in the event of a breach.

22. Exhibit A, Settlement Agreement,
¶ 20.

26 23. In September, 1993, the
27 Church learned of Armstrong's filing
28 of declarations in the Aznaran case.

23. Exhibit E, Declaration of Laurie J.
Bartilson, ¶¶ 2 - 8, 11.

1 Church counsel determined that these
2 actions and others were violations of
3 the Settlement Agreement.

4
5 24. In December, 1991, the Church
6 brought a motion to enforce the
7 Settlement Agreement which alleged
8 that Armstrong had breached the
9 Agreement, and which sought
10 damages and a permanent injunction
11 against Armstrong. The sole purpose
12 of this motion was to enforce the
13 Settlement Agreement against
14 Armstrong.

24. Id., ¶12.

15
16 25. In December, 1991, the Court
17 denied the Church's motion to enforce
18 the Settlement Agreement on the
19 ground that the Settlement
20 Agreement itself was insufficient to
21 confer continuing jurisdiction upon the
22 Court.

25. Id., ¶13; Exhibit G, Transcript of
Proceedings, pp. 63 - 65.

23
24 26. In February, 1992, the Church
25 filed the Complaint herein, seeking
26 damages and a preliminary and
27 permanent injunction for Armstrong's
28 breaches of the Settlement

26. Verified Complaint.

1 Agreement.

2

3 27. Judge Dufficy ordered this action
4 moved from Marin County to Los
5 Angeles County, but only after issuing
6 a temporary restraining order
7 prohibiting Armstrong from further
8 breaching the Settlement Agreement.

27. Exhibit E, Bartilson Dec., ¶15;
Exhibit H, Order of March 5, 1992;
Exhibit I, Order of March 24, 1992.

9

10 28. Before the file in this case was
11 moved to Los Angeles, but after the
12 TRO was issued, Armstrong
13 discussed his experiences with the
14 Church for hours with attorneys for
15 litigants against protected entities,
16 and gave interviews to the press in
17 which he also disclosed his
18 experiences with the Church.

28. Exhibit E, Bartilson Dec., ¶16-17.

19

20 29. The TRO issued by Judge Dufficy
21 provided that Armstrong and his
22 agents were enjoined from violating
23 the Settlement Agreement, including
24 the following provisions,

29. Exhibit H; Exhibit E,
Bartilson Dec., ¶¶ 16-18.

25 "2. Armstrong is restrained
26 from violating Paragraph 7(D) which
27 prohibits Armstrong from creating or
28 publishing books or magazine articles,

1 disclosing his experiences with
2 Scientology, and any knowledge or
3 information he may have concerning
4 the Church of Scientology, L. Ron
5 Hubbard, or any of the organizations
6 listed in paragraph 1 of the
7 Agreement ("Scientology
8 organizations") affiliated therewith,
9 disclosing documents identified in
10 Exhibit A to the Settlement
11 Agreement, including films, tapes,
12 photographs, recordings or variations
13 or copies of any such materials which
14 concern or relate to the religion of
15 Scientology, L. Ron Hubbard or any of
16 the Scientology organizations;

17 "3. Defendant is restrained
18 from violating the provisions of
19 Paragraph 7(G) which prohibits
20 Defendant from voluntarily assisting
21 or cooperating with any person
22 adverse to Scientology in any
23 proceeding against any of the
24 Scientology organizations, or from
25 cooperating in any manner with any
26 organizations aligned against
27 Scientology;

28 "4. Defendant is restrained

1 from violating the provisions of
2 Paragraph 7(H) which prohibits
3 Defendant from testifying or
4 participating in judicial or
5 administrative proceedings adverse to
6 Scientology or any of the Scientology
7 organizations unless compelled to do
8 so by subpoena or lawful process;

9 "5. Defendant is restrained
10 from violating the provisions of
11 Paragraph 10, which prohibits
12 Defendant from assisting or advising
13 anyone, including individuals,
14 partnerships, associations,
15 corporations, or governmental entities
16 contemplating any claim or engaged in
17 litigation or involved in or
18 contemplating any activity adverse to
19 the interests of any of the Scientology
20 organizations. . . ."

21 As a result, the Church
22 applied for an order to
23 show cause re contempt,
24 the sole purpose of which
25 was to enforce the Settlement
26 Agreement and the TRO.

27
28 30. The Marin Court did not rule on

30. Exhibit J, Order of March 27,

1 the merits of the Church's application 1992.
2 for an order to show cause re
3 contempt, but simply instructed the
4 Church to re-file it in Los Angeles.

5
6 31. On May 28, 1992, the Honorable
7 Ronald Sohigian issued a preliminary
8 injunction enforcing the Settlement
9 Agreement, finding, inter alia, that the
10 Church had demonstrated a
11 substantial probability of success on
12 the merits, had been irreparably
13 harmed by Armstrong's breaches, and
14 that the earlier denial of the motion to
15 enforce the settlement agreement on
16 jurisdictional grounds did not preclude
17 the bringing of the action.

31. Exhibit K, Order of May 28,
1992.

18
19 32. On May 16, 1994, the Second
20 District Court of Appeal affirmed the
21 order granting a preliminary injunction,
22 which it held restrained "Armstrong's
23 voluntary intermeddling in other
24 litigation against [the] Church, in
25 violation of his own agreement."

32. Exhibit L, Opinion and Order of
May 16, 1994, pp. 8-11.

26
27 33. The case identified by Armstrong
28 in the Amended Cross-Complaint, ¶

33. Exhibit M, Complaint in Church of
Scientology International v. Xanthos,

1 50, is the case of Church of
2 Scientology International v. Xanthos,
3 et al., United States District Court for
4 the Central District of California, Case
5 No. 91 4301 SUW (Tx) ("Xanthos").
6

et al.

7 34. Xanthos is a complaint against
8 numerous IRS agents for
9 constitutional violations. The
10 allegation that Armstrong aided the
11 agents in their illegal and fruitless
12 criminal investigations is plainly a part
13 of the constitutional violations
14 alleged.

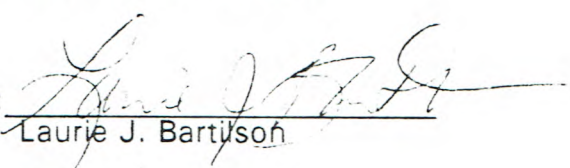
33. Exhibit M, passim.

15
16 35. In August, 1991, Armstrong
17 began working for Ford Greene as a
18 paralegal on the Aznaran case.

34. Exhibit E, Bartilson Dec., ¶¶ 9,
11.

19
20 Dated: June 14, 1994

BOWLES & MOXON

21
22 By: 
Laurie J. Bartilson

23
24 Andrew H. Wilson
Linda M. Fong
WILSON, RYAN & CAMPILONGO

25
26
27 Attorneys for Plaintiff and
Cross-Defendant CHURCH OF
SCIENTOLOGY INTERNATIONAL
28

Exhibit A

MUTUAL RELEASE OF ALL CLAIMS AND SETTLEMENT AGREEMENT

1. This Mutual Release of All Claims and Settlement Agreement is made between Church of Scientology International (hereinafter "CSI") and Gerald Armstrong, (hereinafter "Plaintiff") Cross-Complainant in Gerald Armstrong v. Church of Scientology of California, Los Angeles Superior Court, Case No. 420 153. By this Agreement, Plaintiff hereby specifically waives and releases all claims he has or may have from the beginning of time to and including this date, including all causes of action of every kind and nature, known or unknown for acts and/or omissions against the officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel of CSI as well as the Church of Scientology of California, its officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel; Religious Technology Center, its officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel; all Scientology and Scientology affiliated organizations and entities and their officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel; Author Services, Inc., its officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel; L. Ron Hubbard, his heirs, beneficiaries, Estate and its executor; Author's Family Trust, its beneficiaries and its trustee; and Mary Sue Hubbard, (all hereinafter collectively referred to as the



"Releasees"). The parties to this Agreement hereby agree as follows:

2. It is understood that this settlement is a compromise of doubtful and disputed claims, and that any payment is not to be construed, and is not intended, as an admission of liability on the part of any party to this Agreement, specifically, the Releasees, by whom liability has been and continues to be expressly denied. In executing this settlement Agreement, Plaintiff acknowledges that he has released the organizations, individuals and entities listed in the above paragraph, in addition to those defendants actually named in the above lawsuit, because among other reasons, they are third party beneficiaries of this Agreement.

3. Plaintiff has received payment of a certain monetary sum which is a portion of a total sum of money paid to his attorney, Michael J. Flynn. The total sum paid to Mr. Flynn is to settle all of the claims of Mr. Flynn's clients. Plaintiff's portion of said sum has been mutually agreed upon by Plaintiff and Michael J. Flynn. Plaintiff's signature below this paragraph acknowledges that Plaintiff is completely satisfied with the monetary consideration negotiated with and received by Michael J. Flynn. Plaintiff acknowledges that there has been a block settlement between Plaintiff's attorney, Michael J. Flynn, and the Church of Scientology and Churches and entities related to the Church of Scientology, concerning all of Mr. Flynn's clients who were in litigation with any Church of Scientology or related entity. Plaintiff has received a portion of this block.

amount, the receipt of which he hereby acknowledges. Plaintiff understands that this amount is only a portion of the block settlement amount. The exact settlement sum received by Plaintiff is known only to Plaintiff and his attorney, Michael J. Flynn, and it is their wish that this remain so and that this amount remain confidential.



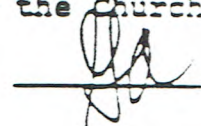
Signature line for Gerald Armstrong

4. For and in consideration of the above described consideration, the mutual covenants, conditions and release contained herein, Plaintiff does hereby release, acquit and forever discharge, for himself, his heirs, successors, executors, administrators and assigns, the Releasees, including Church of Scientology of California, Church of Scientology International, Religious Technology Center, all Scientology and Scientology affiliated organizations and entities, Author Services, Inc. (and for each organization or entity, its officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel); L. Ron Hubbard, his heirs, beneficiaries, Estate and its executor; Author's Family Trust, its beneficiaries and trustee; and Mary Sue Hubbard, and each of them, of and from any and all claims, including, but not limited to, any claims or causes of action entitled Gerald Armstrong v. Church of Scientology of California, Los Angeles Superior Court, Case No. 420 153 and all demands, damages, actions and causes of actions of every kind and nature, known or unknown,

for or because of any act or omission allegedly done by the Releasees, from the beginning of time to and including the date hereof. Therefore, Plaintiff does hereby authorize and direct his counsel to dismiss with prejudice his claims now pending in the above referenced action. The parties hereto will execute and cause to be filed a joint stipulation of dismissal in the form of the one attached hereto as Exhibit "A".

A. It is expressly understood by Plaintiff that this release and all of the terms thereof do not apply to the action brought by the Church of Scientology against Plaintiff for Conversion, Fraud and other causes of action, which action has already gone to trial and is presently pending before the Second District, Third Division of the California Appellate Court (Appeal No. B005912). The disposition of those claims are controlled by the provisions of the following paragraph hereinafter.

B. As of the date this settlement Agreement is executed, there is currently an appeal pending before the California Court of Appeal, Second Appellate District, Division 3, arising out of the above referenced action delineated as Appeal No. B005912. It is understood that this appeal arises out of the Church of Scientology's complaint against Plaintiff which is not settled herein. This appeal shall be maintained notwithstanding this Agreement. Plaintiff agrees to waive any rights he may have to take any further appeals from any decision eventually reached by the Court of Appeal or any rights he may have to oppose (by responding brief or any other means) any further appeals taken by the Church of

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Scientology of California. The Church of Scientology of California shall have the right to file any further appeals it deems necessary.

5. For and in consideration of the mutual covenants, conditions and release contained herein, and Plaintiff dismissing with prejudice the action Gerald Armstrong v. Church of Scientology of California, Los Angeles Superior Court, Case No. 420 153, the Church of Scientology of California does hereby release, acquit and forever discharge for itself, successors and assigns, Gerald Armstrong, his agents, representatives, heirs, successors, assigns, legal counsel and estate and each of them, of and from any and all claims, causes of action, demands, damages and actions of every kind and nature, known or unknown, for or because of any act or omission allegedly done by Gerald Armstrong from the beginning of time to and including the date hereof.

6. In executing this Agreement, the parties hereto, and each of them, agree to and do hereby waive and relinquish all rights and benefits afforded under the provisions of Section 1542 of the Civil Code of the State of California, which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

7. Further, the undersigned hereby agree to the following:

A. The liability for all claims is expressly denied by the parties herein released, and this final compromise and

settlement thereof shall never be treated as an admission of liability or responsibility at any time for any purpose.


B. Plaintiff has been fully advised and understands that the alleged injuries sustained by him are of such character that the full extent and type of injuries may not be known at the date hereof, and it is further understood that said alleged injuries, whether known or unknown at the date hereof, might possibly become progressively worse and that as a result, further damages may be sustained by Plaintiff; nevertheless, Plaintiff desires by this document to forever and fully release the Releasees. Plaintiff understands that by the execution of this release no further claims arising out of his experience with, or actions by, the Releasees, from the beginning of time to and including the date hereof, which may now exist or which may exist in the future may ever be asserted by him or on his behalf, against the Releasees.

C. Plaintiff agrees to assume responsibility for the payment of any attorney fee, lien or liens, imposed against him past, present, or future, known or unknown, by any person, firm, corporation or governmental entity or agency as a result of, or growing out of any of the matters referred to in this release. Plaintiff further agrees to hold harmless the parties herein released, and each of them, of and from any liability arising therefrom.

D. Plaintiff agrees never to create or publish or attempt to publish, and/or assist another to create for publication by means of magazine, article, book or other

A handwritten signature in dark ink, appearing to be 'JA', is written over a horizontal line.

similar form, by writing or to broadcast or to assist another to create, write, film or video tape or audio tape any show, program or movie, or to grant interviews or discuss with others, concerning their experiences with the Church of Scientology, or concerning their personal or indirectly acquired knowledge or information concerning the Church of Scientology, L. Ron Hubbard or any of the organizations, individuals and entities listed in Paragraph 1 above. Plaintiff further agrees that he will maintain strict confidentiality and silence with respect to his experiences with the Church of Scientology and any knowledge or information he may have concerning the Church of Scientology, L. Ron Hubbard, or any of the organizations, individuals and entities listed in Paragraph 1 above. Plaintiff expressly understands that the non-disclosure provisions of this subparagraph shall apply, inter alia, but not be limited, to the contents or substance of his complaint on file in the action referred to in Paragraph 1 hereinabove or any documents as defined in Appendix "A" to this Agreement, including but not limited to any tapes, films, photographs, recastings, variations or copies of any such materials which concern or relate to the religion of Scientology, L. Ron Hubbard, or any of the organizations, individuals, or entities listed in Paragraph 1 above. The attorneys for Plaintiff, subject to the ethical limitations restraining them as promulgated by the state or federal regulatory associations or agencies, agree not to disclose any of the terms and conditions of the settlement negotiations, amount of the



settlement, or statements made by either party during settlement conferences. Plaintiff agrees that if the terms of this paragraph are breached by him, that CSI and the other Releasees would be entitled to liquidated damages in the amount of \$50,000 for each such breach. All monies received to induce or in payment for a breach of this Agreement, or any part thereof, shall be held in a constructive trust pending the outcome of any litigation over said breach. The amount of liquidated damages herein is an estimate of the damages that each party would suffer in the event this Agreement is breached. The reasonableness of the amount of such damages are hereto acknowledged by Plaintiff.

E. With exception to the items specified in Paragraph 7(L), Plaintiff agrees to return to the Church of Scientology International at the time of the consummation of this Agreement, all materials in his possession, custody or control (or within the possession, custody or control of his attorney, as well as third parties who are in possession of the described documents), of any nature, including originals and all copies or summaries of documents defined in Appendix "A" to this Agreement, including but not limited to any tapes, computer disks, films, photographs, recastings, variations or copies of any such materials which concern or relate to the religion of Scientology, L. Ron Hubbard or any of the organizations, individuals or entities listed in Paragraph 1 above, all evidence of any nature, including evidence obtained from the named defendants through discovery, acquired for the purposes of this lawsuit or any lawsuit, or acquired for any other purpose

concerning any Church of Scientology, any financial or administrative materials concerning any Church of Scientology, and any materials relating personally to L. Ron Hubbard, his family, or his estate. In addition to the documents and other items to be returned to the Church of Scientology International listed above and in Appendix "A", Plaintiff agrees to return the following:

(a) All originals and copies of the manuscript for the work "Excalibur" written by L. Ron Hubbard;

(b) All originals and copies of documents commonly known as the "Affirmations" written by L. Ron Hubbard; and

(c) All documents and other items surrendered to the Court by Plaintiff and his attorneys pursuant to Judge Cole's orders of August 24, 1982 and September 4, 1982 and all documents and other items taken by the Plaintiff from either the Church of Scientology or Omar Garrison. This includes all documents and items entered into evidence or marked for identification in Church of Scientology of California v. Gerald Armstrong, Case No. C 420 153. Plaintiff and his attorney will execute a Joint Stipulation or such other documents as are necessary to obtain these documents from the Court. In the event any documents or other items are no longer in the custody or control of the Los Angeles Superior Court, Plaintiff and his counsel will assist the Church in recovering these documents as quickly as possible, including but not limited to those tapes and other documents now in the possession of the United States District Court in the case of United States v. Zolin, Case No. CV

85-0440-HLH(), presently on appeal in the Ninth Circuit Court of Appeals. In the event any of these documents are currently lodged with the Court of Appeal, Plaintiff and his attorneys will cooperate in recovering those documents as soon as the Court of Appeal issues a decision on the pending appeal.

To the extent that Plaintiff does not possess or control documents within categories A-C above, Plaintiff recognizes his continuing duty to return to CSI any and all documents that fall within categories A-C above which do in the future come into his possession or control.

F. Plaintiff agrees that he will never again seek or obtain spiritual counselling or training or any other service from any Church of Scientology, Scientologist, Dianetics or Scientology auditor, Scientology minister, Mission of Scientology, Scientology organization or Scientology affiliated organization.

G. Plaintiff agrees that he will not voluntarily assist or cooperate with any person adverse to Scientology in any proceeding against any of the Scientology organizations, individuals, or entities listed in Paragraph 1 above. Plaintiff also agrees that he will not cooperate in any manner with any organizations aligned against Scientology.

H. Plaintiff agrees not to testify or otherwise participate in any other judicial, administrative or legislative proceeding adverse to Scientology or any of the Scientology Churches, individuals or entities listed in Paragraph 1 above unless compelled to do so by lawful subpoena or other lawful process. Plaintiff shall not make

himself amenable to service of any such subpoena in a manner which invalidates the intent of this provision. Unless required to do so by such subpoena, Plaintiff agrees not to discuss this litigation or his experiences with and knowledge of the Church with anyone other than members of his immediate family. As provided hereinafter in Paragraph 18(d), the contents of this Agreement may not be disclosed.

I. The parties hereto agree that in the event of any future litigation between Plaintiff and any of the organizations, individuals or entities listed in Paragraph 1 above, that any past action or activity, either alleged in this lawsuit or activity similar in fact to the evidence that was developed during the course of this lawsuit, will not be used by either party against the other in any future litigation. In other words, the "slate" is wiped clean concerning past actions by any party.

J. It is expressly understood and agreed by Plaintiff that any dispute between Plaintiff and his counsel as to the proper division of the sum paid to Plaintiff by his attorney of record is between Plaintiff and his attorney of record and shall in no way affect the validity of this Mutual Release of All Claims and Settlement Agreement.

K. Plaintiff hereby acknowledges and affirms that he is not under the influence of any drug, narcotic, alcohol or other mind-influencing substance, condition or ailment such that his ability to fully understand the meaning of this Agreement and the significance thereof is adversely affected.

A handwritten signature in black ink, appearing to be 'JG', is written over a horizontal line.

L. Notwithstanding the provisions of Paragraph 7(E) above, Plaintiff shall be entitled to retain any artwork created by him which concerns or relates to the religion of Scientology, L. Ron Hubbard or any of the organizations, individuals or entities listed in Paragraph 1 above provided that such artwork never be disclosed either directly or indirectly, to anyone. In the event of a disclosure in breach of this Paragraph 7(L), Plaintiff shall be subject to the liquidated damages and constructive trust provisions of Paragraph 7(D) for each such breach.

8. Plaintiff further agrees that he waives and relinquishes any right or claim arising out of the conduct of any defendant in this case to date, including any of the organizations, individuals or entities as set forth in Paragraph 1 above, and the named defendants waive and relinquish any right or claim arising out of the conduct of Plaintiff to date.

9. This Mutual Release of All Claims and Settlement Agreement contains the entire agreement between the parties hereto, and the terms of this Agreement are contractual and not a mere recital. This Agreement may be amended only by a written instrument executed by Plaintiff and CSI. The parties hereto have carefully read and understand the contents of this Mutual Release of All Claims and Settlement Agreement and sign the same of their own free will, and it is the intention of the parties to be legally bound hereby. No other prior or contemporaneous agreements, oral or written, respecting such matters, which are not specifically

incorporated herein shall be deemed to in any way exist or bind any of the parties hereto.

10. Plaintiff agrees that he will not assist or advise anyone, including individuals, partnerships, associations, corporations, or governmental agencies contemplating any claim or engaged in litigation or involved in or contemplating any activity adverse to the interests of any entity or class of persons listed above in Paragraph 1 of this Agreement.

11. The parties to this Agreement acknowledge the following:

A. That all parties enter into this Agreement freely, voluntarily, knowingly and willingly, without any threats, intimidation or pressure of any kind whatsoever and voluntarily execute this Agreement of their own free will;

B. That all parties have conducted sufficient deliberation and investigation, either personally or through other sources of their own choosing, and have obtained advice of counsel regarding the terms and conditions set forth herein, so that they may intelligently exercise their own judgment in deciding whether or not to execute this Agreement; and

C. That all parties have carefully read this Agreement and understand the contents thereof and that each reference in this Agreement to any party includes successors, assigns, principals, agents and employees thereof.

12. Each party shall bear its respective costs with respect to the negotiation and drafting of this Agreement and

all acts required by the terms hereof to be undertaken and performed by that party.

13. To the extent that this Agreement inures to the benefit of persons or entities not signatories hereto, this Agreement is hereby declared to be made for their respective benefits and uses.

14. The parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Agreement.

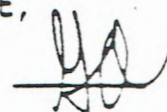
15. This Agreement shall not be construed against the party preparing it, but shall be construed as if both parties prepared this Agreement. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

16. In the event any provision hereof be unenforceable, such provision shall not affect the enforceability of any other provision hereof.

17. All references to the plural shall include the singular and all references to the singular shall include the plural. All references to gender shall include both the masculine and feminine.

18.(A) Each party warrants that they have received independent legal advice from their attorneys with respect to the advisability of making the settlement provided for herein and in executing this Agreement.

(B) The parties hereto (including any officer, agent, employee, representative or attorney of or for any party) acknowledge that they have not made any statement,



representation or promise to the other party regarding any fact material to this Agreement except as expressly set forth herein. Furthermore, except as expressly stated in this Agreement, the parties in executing this Agreement do not rely upon any statement, representation or promise by the other party (or of any officer, agent, employee, representative or attorney for the other party).

(C) The persons signing this Agreement have the full right and authority to enter into this Agreement on behalf of the parties for whom they are signing.

(D) The parties hereto and their respective attorneys each agree not to disclose the contents of this executed Agreement. Nothing herein shall be construed to prevent any party hereto or his respective attorney from stating that this civil action has been settled in its entirety.

(E) The parties further agree to forbear and refrain from doing any act or exercising any right, whether existing now or in the future, which act or exercise is inconsistent with this Agreement.

19. Plaintiff has been fully advised by his counsel as to the contents of this document and each provision hereof. Plaintiff hereby authorizes and directs his counsel to dismiss with prejudice his claims now pending in the action entitled Gerald Armstrong v. Church of Scientology of California, Los Angeles Superior Court, Case No. 420 153.

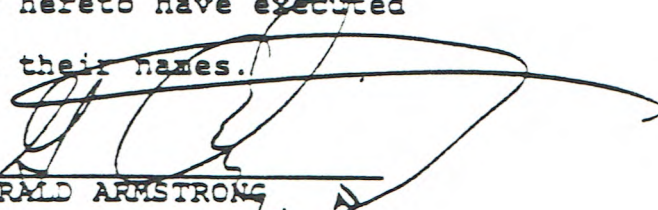
20. Notwithstanding the dismissal of the lawsuit pursuant to Paragraph 4 of this Agreement, the parties hereto agree that the Los Angeles Superior Court shall retain

jurisdiction to enforce the terms of this Agreement. This Agreement may be enforced by any legal or equitable remedy, including but not limited to injunctive relief or declaratory judgment where appropriate. In the event any party to this Agreement institutes any action to preserve, to protect or to enforce any right or benefit created hereunder, the prevailing party in any such action shall be entitled to the costs of suit and reasonable attorney's fees.

21. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be a duplicate original, but all of which, together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, on the date opposite their names.

Dated: December 6, 1985


GERALD ARMSTRONG

Ann A. Richardson
Witness

Michael J. Flynn
Witness

Dated: 12/6/86

APPROVED AS TO FORM AND
CONTENT:

M. J. Flynn
MICHAEL J. FLYNN
Attorney for
GERALD ARMSTRONG

Dated: December 11, 1986

Heber C. J. [Signature]
for
CHURCH OF SCIENTOLOGY
INTERNATIONAL

APPENDIX A

1. As used herein, the term "document" or "documents" include but are not limited to all originals, file copies and copies not identical to the original, no matter how prepared, of all writings, papers, notes, records, books and other tangible things including, by way of example and not of limitation, the following:

a. Memoranda, notes, calendars, appointment books, shorthand or stenographer's notebooks, correspondence, letters and telegrams, whether received, sent, filed or maintained internally;

b. Drafts and notes, whether typed, penciled or otherwise, whether or not used;

c. Minutes, reports and summaries of meetings;

d. Contracts, agreements, understandings, commitments, proposals and other business dealings;

e. Recordings, transcriptions and memoranda or notes made of any telephone or face-to-face oral conversations between or among persons;

f. Dictated tapes or other sound recordings;

g. Computer printouts or reports and the applicable program or programs therefor;

h. Tapes, cards or any other means by which data are stored or preserved electrically, electronically, magnetically or mechanically, and the applicable program or program therefor (from which plaintiff may reproduce or cause to be reproduced such data in written form);

i. Pictures, drawings, photographs, charts or other graphic representations;

j. Checks, bills, notes, receipts, or other evidence of payment;

k. Ledgers, journals, financial statements, accounting records, operating statements, balance sheets and statements of account.

Exhibit B

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IN AND FOR THE SUPERIOR COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

--oOo--

CHURCH OF SCIENTOLOGY
INTERNATIONAL, a California
not-for-profit religious
corporation,
Plaintiff,

**CERTIFIED
COPY**

vs.

Case No. BC 052395

GERALD ARMSTRONG; DOES 1
through 25, inclusive,
Defendants.

DEPOSITION OF
GERALD ARMSTRONG

Wednesday, June 24, 1992

REPORTED BY: SUSAN M. SKIGEN, CSR #5829

1 sold you it; right?

2 A. I don't think I ever have used those words
3 and I won't now because Michael Flynn was under the same
4 pressure that I was under. He really had been attacked,
5 you know, and I don't fault Michael Flynn, although it
6 sure hurt.

7 I really fault the organization for using
8 Michael Flynn as a vehicle to get to me. I mean, that's
9 just corrupt, for them to play with him at all to get to
10 me, his client, it's corruption.

11 And what were they doing with him, he was
12 going to settle his case and they were going to end the
13 attacks on him. Whereas he gives me a contract which
14 says on its face they can continue to attack you with
15 impunity, Mr. Armstrong.

16 Q. And --

17 A. Who but a madman would sign such a
18 document?

19 Q. And at the time you got that agreement you
20 recognized that problem with it, that it didn't prohibit
21 them from saying whatever they wanted about you; right?

22 A. Well, I also understood from basic
23 understanding and from talking to Michael Flynn that as
24 soon as they open their mouth and say one word, they've
25 waived it, you have a new unit of time, they've violated

1 it, that's it, you're free to talk, you can respond
2 because you cannot, this does not have to do with future
3 acts.

4 It does not say specifically they are free
5 to, they will interpret it that way. And I recognize
6 that as soon as I hear that they've dumped documents on
7 the L.A. Times, soon as I know that they've filed all
8 sorts of false most scurrilous statements about me in
9 the high court in London, I know that that's going on.

10 MR. GREENE: Just a second. Let me take
11 about a two minute break.

12 MR. WILSON: Sure. Go ahead. Any time you
13 want to.

14 (Short recess.)

15 MR. WILSON: Okay.

16 MR. GREENE: I don't think you want the
17 last answer.

18 (Pending question read by the reporter.)

19 MR. WILSON: No, I don't.

20 Let's mark this.

21 MR. GREENE: Did we mark No. 6, just for
22 the record? I know you asked him some questions based
23 on it, but I don't know if it actually got into the
24 record as identified as being six?

25 MR. WILSON: Yes, it did.

1 MR. GREENE: Okay. Thanks.

2 MR. WILSON: Q. After how long did this
3 meeting with Mr. Flynn and Mr. Walters take
4 approximately?

5 A. My best recollection is half an hour.

6 Q. And was Mr. Walters there the whole time?

7 A. I believe so.

8 Q. Where did it take place?

9 A. It was in a hotel in Westwood.

10 Q. Okay.

11 A. And I don't recall the name of it.

12 Q. Have you given us your best recollection of
13 everything that happened at that meeting as far as you
14 can remember now?

15 A. I've given you a recollection of everything
16 in answer to your questions. I don't know if I can come
17 up with more just like that.

18 Q. You testified that the liquidated damages
19 provision was discussed; right?

20 A. Right.

21 Q. And Mr. Flynn told you that that was
22 unenforceable; right?

23 A. Right. I mean, I, I had seen that, in
24 fact, I had signed documents like that inside the
25 organization, so I knew that they were unenforceable.

Exhibit C

FILED

DEC 11 1986

FRANK S. ZOLIN County Clerk

Paul G. Brockenridge
BY ROSIE M. HART, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

5	GERALD ARMSTRONG,)	No. C 420 153
6)	(Severed Action)
7	Cross-Complainant,)	
8	v.)	ORDER DISMISSING ACTION
9	CHURCH OF SCIENOTOLOGY OF)	WITH PREJUDICE
10	CALIFORNIA, a California)	
11	Corporation,)	
12	Cross-Defendant.)	

Upon consideration of the parties' Stipulation for Dismissal, the "Mutual release of All Claims and Settlement Agreement" and the entire record herein, it is

ORDERED AND ADJUDGED:

1. That this action is dismissed with prejudice.
2. That an executed duplicate original of the parties' "Mutual Release of All Claims and Settlement Agreement" filed herein under seal shall be retained by the Clerk of this Court under seal.

Dated: December 11, 1986

Paul G. Brockenridge
Hon. Paul G. Brockenridge

C

1 HUB LAW OFFICES
2 Ford Greene, Esquire
3 California State Bar No. 107601
4 711 Sir Francis Drake Boulevard
5 San Anselmo, California 94960-1949
6 Telephone: (415) 258-0360

7
8 Attorney for Defendant
9 GERALD ARMSTRONG

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 IN AND FOR THE COUNTY OF MARIN

13 CHURCH OF SCIENTOLOGY) No. 152 229
14 INTERNATIONAL, a California)
15 not-for-profit religious)
16 corporation;)
17 Plaintiffs,)
18 vs.)
19 GERALD ARMSTRONG; DOES 1)
20 through 25, inclusive,)
21 Defendants.)
22)
23)
24)
25)
26)
27)
28)

Date: March 20, 1992
Time: 9:00 a.m.
Dept: 4 - Specially Set

COPY

1 someone or something was or was not adverse to, or aligned against
2 Scientology. The agreement is not specifically enforceable
3 because not only would it be impossible for the Court to decipher
4 the ambiguities inherent in the agreement; even if it could
5 rationally construe the agreement, it could never enforce it.

6 Additionally, since it would be impossible for the Court to
7 enforce the agreement, it is not appropriate for the Court to
8 issue an injunction.

9 e. Since There Is No Mutuality Of Remedy,
10 Specific Performance Will Not Lie

11 In bilateral contract, such as the agreement herein,
12 mutuality of obligation and remedy is necessary because of mutual
13 promises. The doctrine requires that the promises on each side
14 must be binding obligations in order to be consideration for each
15 other. Mattai v. Hooper (1958) 51 Cal.2d 119, 122, 330 P.2d 625;
16 Larwin-Southern Calif. v. JGB Inv. Co. (1979) 101 Cal.App.3d 606,
17 637, 162 Cal.Rptr. 52. In order for the agreement to be
18 obligatory on either party, it must be mutual and reciprocal in
19 its obligations. Harper v. Goldschmidt () 156 Cal. 245, 104
20 P. 451.

21 Paragraphs 4A and 4B of the agreement prohibit Armstrong from
22 litigating Scientology's complaint against him on appeal while
23 allowing Scientology to litigate the matter in the appellate
24 courts to the extent it desired.

25 Paragraph 7D prohibited Armstrong from speaking to others
26 about Scientology, but does not prohibit Scientology from talking
27 to others about Armstrong.

28 Paragraph 7E required Armstrong to deliver documents about

1 Scientology to Scientology, but does not require Scientology to
2 deliver to Armstrong documents it possessed concerning him.

3 Paragraph 7G prohibited Armstrong from assisting or
4 cooperating with persons adverse to, or aligned against
5 Scientology, but did not prohibit Scientology from assisting or
6 cooperating with persons who were aligned against or adverse to
7 Armstrong.

8 Paragraph 7H prohibited Armstrong from testifying about
9 Scientology, but did not prohibit Scientology from testifying
10 about Armstrong. ^{23/}

11 There are two provisions in the agreement that are mutual.
12 One is that Armstrong would dismiss his Cross-Complaint in
13 consideration for a payment of money. The other was in Paragraph
14 7I which stated that neither party would say anything about the
15 other in future litigation. As to the former, Scientology
16 obtained what it paid for, and as to the latter, Scientology has
17 consistently breached it. Thus, as to the provisions that
18 Scientology seek to specifically enforce, specific performance can
19

20 ²³ Lawrence Heller, the attorney who represented to this
21 Court that "Only Armstrong's cross-complaint was involved in the
22 settlement," Heller Decl. In Support of Preliminary Injunction at
23 1:24, states that it was the intention of the parties that
24 Scientology would enjoy a unilateral right to talk about
25 Armstrong, but that he was to say nothing in response. Id. at
26 2:18-3:5. The reasonableness of Armstrong's rejection of Heller's
27 claim, Exhibit 2 at ¶, is supported by Judge Breckenridge's
28 decision, Exhibit 1-G at 1:28-3:26, and the official
investigation of the Los Angeles County District Attorney's Office
of the so-called "police-sanctioned investigation" of Armstrong.
See, Exhibit 2-M, 2-N, and 2-O. In light of the surrounding
circumstances and his uncompromising stand against Scientology, it
is not reasonable to conclude that Scientology could say whatever
it wanted about Armstrong in its legal papers, Exhibits 2-F, 2-G,
2-H, 2-I, 2-J, and 2-K, but he was required not to respond in
papers of his own.

1 not be had because there is an absence of mutuality.

2 **2. To The Extent That The Agreement Is**
3 **In Restraint Of Trade, It Is Invalid.**

4 Scientology contends that enforcement of the agreement
5 should include preventing Armstrong from working as a paralegal
6 for Ford Greene. Cmplt. at 8:25-9:15; Memo. In Support, at 9:17-
7 10:12. Such is an unreasonable restraint of trade.

8 Business and Professions Code section 16600 provides that,
9 subject to exceptions contained in its chapter, "every contract
10 by which anyone is restrained from engaging in a lawful
11 profession, trade, or business of any kind to that extent is
12 void." The Restatement 2d, Contracts § 186 states: "(1) A promise
13 is unenforceable on grounds of public policy if it is unreasonably
14 in restraint of trade. (2) A promise is in restraint of trade if
15 its performance would limit competition in any business or
16 restrict the promisor in the exercise of a gainful occupation."

17 Although covenants not to compete may be enforceable if for a
18 limited time period, such a covenant in perpetuity is not
19 enforceable. Thus, the lifetime prohibition of Armstrong working
20 as a paralegal is void.

21 **3. Armstrong Has Effective Affirmative Defenses**

22 **a. Laches**

23 A long wait before applying for a preliminary injunction
24 may be evidence that "the harms of which [plaintiff] complain(s)
25 could not have been immediate and urgent." Youngblood v. Wilcox
26 (1989) 207 Cal.App.3d 1368, 1376, 255 Cal.Rptr. 527.

27 Scientology claims that in June, 1991, Cmplt. at p. 2:28,
28 Armstrong began his so-called campaign of "hatred and ill-will"

1 Andrew H. Wilson
WILSON, RYAN & CAMPILONGO
2 235 Montgomery Street
Suite 450
3 San Francisco, California 94104
(415) 391-3900

4 Laurie J. Bartilson
5 BOWLES & MOXON
6 6255 Sunset Boulevard, Suite 2000
Hollywood, CA 90028
(213) 463-4395

7 Attorneys for Plaintiff
8 CHURCH OF SCIENTOLOGY
INTERNATIONAL
9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF LOS ANGELES

12 CHURCH OF SCIENTOLOGY) CASE NO. BC 052395
13 INTERNATIONAL, a California not-for-profit)
religious corporation,) DECLARATION OF LAURIE J.
14) BARTILSON IN SUPPORT OF
Plaintiff,) CROSS-DEFENDANT CHURCH OF
15) SCIENTOLOGY
16) INTERNATIONAL'S MOTION FOR
vs.) SUMMARY ADJUDICATION OF
17) THE SECOND AND THIRD
18) CAUSES OF ACTION OF THE
GERALD ARMSTRONG; DOES 1 through) AMENDED CROSS-COMPLAINT
25, inclusive,)
19) DATE: Aug. 3, 1994
20) TIME: 8:30 a.m.
Defendants.) DEPT: 30
21) DISC CUT-OFF: Oct. 7, 1994
22) MTN CUT-OFF: Oct. 21, 1994
23) TRIAL DATE: Nov. 7, 1994
24)
25)
26)
27)
28)

I, LAURIE J. BARTILSON, hereby declare:

1. I am a member of the law firm of Bowles & Moxon and am an attorney admitted to practice in the State of California. My firm represents plaintiff and cross-defendant Church of Scientology International ("Church") in the instant case. I have personal knowledge of the matters specified in this declaration and, if

1 called upon to testify on such matters, would and could do so competently.

2 2. I am also counsel of record for the Church in the case of Religious
3 Technology Center et al. v. Joseph A. Yanny et al., Los Angeles Superior Court
4 Case No. BC 033035 (the "Yanny case"), and counsel for the Church in the case
5 of Vicki Aznaran et al. v. Church of Scientology of California et al., United States
6 District Court for the Central District of California, Case No. CV 88-1786 JMI(Ex).

7 3. Joseph Yanny represented the Church and other related entities as
8 general counsel and in litigation matters from 1983 until 1987.

9 4. In July, 1991, Yanny substituted into the Aznaran case as counsel for
10 the Aznarans against the Church and related entities. The Church asked Yanny to
11 remove himself from the case, because of his prior employment as the Church's
12 counsel. When Yanny refused, the Church moved for his disqualification.

13 5. While the Church's motion for disqualification was pending before the
14 federal court, Yanny continued to act as the Aznarans' counsel, and to file
15 memoranda, motions and other documents on their behalf. Acting on the advice of
16 counsel, including myself, the Church initiated the Yanny action, and requested
17 that Yanny be enjoined from his adverse representation of the Aznarans.

18 6. The Church sought and obtained a preliminary injunction against
19 Yanny in the Yanny case. I was present during the hearings which preceded the
20 issuance of the injunction. During those proceedings, Yanny asserted that Gerald
21 Armstrong had been employed by him to aid him as a paralegal on the Aznaran
22 case. Yanny also submitted to the court several declarations signed by Armstrong
23 in which Armstrong, inter alia, described his purported experiences with the
24 Church, disclosed portions of the Settlement Agreement, and admitted that he had
25 voluntarily come to Los Angeles at Yanny's request for the purpose of helping
26 Yanny with the Aznaran case.

27 7. On July 24, 1991, the federal court in the Aznaran case issued an
28 order sua sponte withdrawing its permission for Yanny to substitute into the

1 Aznaran case on behalf of the Aznarans, and ordering Ford Greene reinstated as
2 the Aznarans' counsel.

3 8. Declarations of Gerald Armstrong were filed in the Aznaran case by
4 Greene on August 26, 1991 and September 3, 1991. In paragraph 18 of his
5 September 3 declaration, Armstrong admitted that he had been providing Greene
6 with paralegal assistance in the Aznaran case.

7 9. The Church filed declarations in the Aznaran case which mention or
8 concern Armstrong as follows:

9 a. Declaration of Laurie J. Bartilson dated August 23, 1991.

10 This declaration states that on August 19, 1991, a man who
11 identified himself to me as Gerry Armstrong answered the telephone
12 in Mr. Greene's office, and took a message for Mr. Greene. [¶3.] A
13 true and correct copy of this declaration is attached hereto as Exhibit
14 1.

15 b. Declaration of Laurie J. Bartilson dated August 26, 1991.

16 This declaration again states that on August 19, 1991, a man who
17 identified himself to me as Gerry Armstrong answered the telephone
18 in Mr. Greene's office, and adds that Armstrong told me that he was
19 at Mr. Greene's office "helping out." [¶3.] It also identifies two
20 declarations filed by Armstrong and Yanny in the Yanny case in which
21 Armstrong and Yanny claimed that Armstrong was Yanny's paralegal.
22 [¶4.] A true and correct copy of this declaration is attached hereto as
23 Exhibit 2.

24 c. Declaration of Lynn R. Farny dated August 26, 1991. This

25 declaration identifies a picture of Armstrong which was taken by a
26 private investigator at Mr. Greene's office. [¶3.] It also quotes
27 statements made by Armstrong in 1984 on a videotape which Mr.
28 Farny states he has personally viewed. [¶4, 6.] A true and correct

1 copy of this declaration is attached hereto as Exhibit 3.

2 d. Declaration of Laurie J. Bartilson dated September 3, 1991.

3 This declaration again states that on August 19, 1991, a man who
4 identified himself to me as Gerry Armstrong answered the telephone
5 in Mr. Greene's office, and took a message for Mr. Greene [¶3]. It
6 also states that on August 30, 1991, Armstrong called me on Mr.
7 Greene's behalf, and asked me to provide him with additional copies
8 of papers and exhibits. [¶4.] A true and correct copy of this
9 declaration is attached hereto as Exhibit 4.

10 e. Declaration of August Murphy dated September 4, 1991.

11 This declaration states that on August 19, 1991, at 3:30 p.m., Mr.
12 Murphy went to Greene's offices to pick up some papers. While
13 there, he observed a man sleeping on the floor of Mr. Greene's office.
14 [¶3.] When Mr. Murphy returned to Mr. Greene's office at 7:30, the
15 man who had been sleeping on the floor identified himself to Mr.
16 Murphy as Gerald Armstrong, and told Mr. Murphy to return at 9:00
17 p.m. [¶6.] When Mr. Murphy returned at 9:00 p.m., Armstrong
18 announced that he was going to Kinko's to pick up the copies. He
19 left, and returned with a large box of documents at approximately
20 9:35 p.m. Armstrong and Greene then assembled a set of documents
21 and gave them to Mr. Murphy. [¶¶ 7, 8.] A true and correct copy of
22 this declaration is attached hereto as Exhibit 5.

23 10. Each of the declarations identified in paragraph 9, supra, was filed in
24 support of the Church's motion to dismiss the Aznaran case. The Church sought
25 dismissal as an appropriate sanction for the deliberate hiring by the Aznarans of the
26 Church's former lawyer. The Church argued that Armstrong's employment as a
27 paralegal for first Yanny and then Greene gave rise to an inference of Yanny's
28 continuing improper involvement in the Aznaran case. All of the declarations were

1 obviously and reasonably filed to provide the court with evidence in support of this
2 theory.

3 11. Upon review of the declarations of Armstrong submitted in Yanny and
4 in Aznaran, the statements of Yanny, my own personal contact with Armstrong
5 acting as Greene's paralegal, as well as the Mutual Release and Settlement
6 Agreement ("the Agreement") signed by Armstrong in December, 1986, in the
7 case of Church of Scientology of California v. Gerald Armstrong, LASC No. C 420
8 153 ("Armstrong I"), I concluded that Armstrong had plainly and obviously violated
9 the terms of the Agreement. Specifically, Armstrong had breached paragraphs
10 7(D), 7(H), 7(G), 10, 12 and/or 18 of the Agreement.

11 12. On October 3, 1991, because of these clear and continuing violations
12 of the Agreement, the Church filed a motion to enforce the Agreement in
13 Armstrong I. The sole purpose of the filing of that motion was to obtain the relief
14 requested; i.e., the benefits of the Agreement for which the Church had bargained
15 and paid Armstrong approximately \$800,000.

16 13. On December 23, 1991, the Armstrong I court determined that it did
17 not have continuing jurisdiction over the parties and the Agreement, and so denied
18 the Church's motion.

19 14. Because Armstrong had breached the Agreement as described herein,
20 and because Armstrong was continuing to breach the Agreement in, at least, his
21 work for Mr. Greene, the Church initiated the instant action on February 4, 1992,
22 seeking damages for breach of contract and a preliminary and permanent
23 injunction. The sole purpose of the filing of the Complaint herein was to obtain the
24 relief which it requests.

25 15. On March 5, 1992, Judge Dufficy issued a Temporary Restraining
26 Order ("TRO") against Armstrong which prohibited Armstrong from further
27 breaching the Agreement. On March 20, 1992, Judge Dufficy extended the
28 duration of the TRO during the pendency of the transfer of the case to Los

1 Angeles.

2 16. On March 20, 1992, following the hearing in which Judge Dufficy
3 extended the TRO, I observed Armstrong and Greene giving interviews to members
4 of the press in the Marin County courthouse. Later I saw a broadcast on CNN in
5 which Armstrong made statements concerning his experiences with the Church.

6 17. In late March, I read the transcript of a deposition in which
7 Armstrong testified under oath that he had, inter alia, voluntarily discussed his
8 experiences with the Church for several hours with attorneys for plaintiffs in a case
9 in which a Scientology-related entity was a named defendant, and provided them
10 with documents.

11 18. My co-counsel and I concluded that Armstrong's conduct described in
12 paragraphs 16 and 17 were plain violations of the TRO, and brought a motion
13 requesting the Marin Court to issue an OSC re: contempt.

14 I declare under penalty of perjury under the laws of the State of California
15 that the foregoing is true and correct.

16 Executed this 14th day of June, 1994, at Los Angeles, California.

17
18 
19 _____
20 Laurie J. Bartilson

DECLARATION OF LAURIE J. BARTILSON

1
2 I, LAURIE J. BARTILSON, hereby declare and state:

3 1. I am a partner in the firm of Bowles & Moxon, which is
4 co-counsel of record for defendants in the above-captioned
5 case. I have personal knowledge of the matters set forth
6 herein and, if called upon to do so, could and would
7 competently testify thereto.

8 2. On August 19, 1991, at approximately 10:30 a.m., I
9 called the offices of Ford Greene in San Anselmo, California.
10 The telephone was answered by an answering machine, which played
11 a message stating that Ford Greene had had an emergency, and
12 would not be able to return any calls until Monday, August 19.
13 I left a message on the machine, giving my name and telephone
14 number, and requesting that Mr. Greene contact me concerning
15 service of the papers which he had due to be filed that day.

16 3. At approximately 1:15 p.m. on August 19, 1991, I again
17 called Greene's offices. This time a man answered the
18 telephone, and offered to take a message for Ford Greene. When
19 I asked the man for his name, he told me that he was Gerry
20 Armstrong. I was surprised to hear this, as I knew that until
21 recently, Mr. Armstrong had been working as a paralegal for
22 Joseph Yanny. I explained to Mr. Armstrong that I wanted to
23 coordinate service of the papers with Mr. Greene, and offered
24 to have a courier pick them up from Greene's offices. Mr.
25 Armstrong promised to relay the message.

26 4. At approximately 2:15 p.m. on August 19, 1991, Mr.
27 Greene returned my call. I was tied up, but called him back
28 shortly thereafter. Mr. Greene informed that the papers "were

1 at Kinko's" being copied, and that he had been told that they
2 would be ready between 5:00 and 6:00. He agreed to call my
3 offices when they were ready for pickup.

4 5. I later discovered that my San Francisco courier had
5 already left for San Anselmo. As the drive was substantial, he
6 decided to simply wait at Mr. Greene's office until the papers
7 were ready,

8 6. Mr. Greene did not give the courier copies of the
9 papers until approximately 9:00 p.m. The courier then called
10 my offices, and listed the materials which he had been given.
11 The quantity of papers was substantially smaller than I had
12 expected.

13 7. At approximately 9:45 p.m., I called Mr. Greene's
14 offices, and once again spoke with Mr. Greene. I told him
15 that I wanted to review with him what I the courier had gotten,
16 as it seemed incomplete. Mr. Greene interrupted me, and said,
17 "Let me make it easier for you. Let me tell you what you don't
18 have. You don't have any separate statements with the summary
19 judgment oppositions, you don't have an opposition to the
20 motion to dismiss, you don't have an opposition to the Singer
21 motion, and you don't have an opposition to the Rule 42
22 motion."

23 8. I asked Mr. Greene why it was that I had not been
24 served with these papers. He stated that I had not been served
25 because they were not completed and had not yet been filed. He
26 stated that he planned to continue to work on them and to file
27 them late. He said, "I assume that you all will object to
28 that." I told him that I thought that we would, and expressed

1 the view that the Court would be likely to object as well,
2 since the deadlines were imposed by the Court.

3 I declare under the penalties of perjury under the laws of
4 the United States of America that the foregoing is true and
5 correct.

6 Executed this 23rd day of August, 1991, at Los Angeles,
7 California.

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LAURIE J. BARTILSON

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DECLARATION OF LAURIE J. BARTILSON

I, LAURIE J. BARTILSON, hereby declare and state:

1. I am co-counsel of record for plaintiffs in the case of Aznaran v. Church of Scientology of California, et al., Case No. CV 88-1786 JMI(Ex). I have personal knowledge of the matters set forth herein and, if called upon to do so, could and would competently testify thereto.

2. On August 19, 1991, I called the offices of Ford Greene, counsel for plaintiffs in this case, to arrange to have a courier pick up several oppositions which plaintiffs were due to file that day.

3. The person who answered the telephone in Mr. Greene's office identified himself as Gerald Armstrong. When queried, Armstrong stated that he was at Greene's office "helping out." I recognized that Armstrong was a person who has been a long-term litigation adversary of my client, Church of Scientology of California, having been sued for conversion of documents belonging to the Church's Founder.

4. In addition, in a case pending in Los Angeles Superior Court, Religious Technology Center, et al. v. Yanny, Case No. BC 033035. Armstrong and Joseph Yanny have both filed declarations under penalty of perjury that Armstrong was hired by Yanny as a paralegal to work on this case. (Ex. B, Declaration of Joseph A Yanny, July 31, 1991, para. 4; Ex. H, Declaration of Gerald Armstrong, July 19, 1991, para. 4). Even though Yanny protested its issuance, partially on the ground that Armstrong was his paralegal in this case (Ex. G, Transcript of August 6, 1991, at 25), Yanny was preliminarily

1 enjoined in that case from directly or indirectly acting as
2 counsel against defendants on behalf of either the Aznarans or
3 Gerald Armstrong.

4 I declare under the penalties of perjury under the laws of
5 California and the United States of America that the foregoing
6 is true and correct.

7 Executed this day of August at Los Angeles, California.

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11 LAURIE J. BARTILSON
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DECLARATION OF LYNN R. FARNY

1 I, Lynn R. Farny, do declare:

2 1. I am over 18 years of age and make this declaration of
3 my own personal knowledge and for those matters stated upon
4 information and belief, I believe them to be true and accurate.
5 If called as a witness to testify as to the matters herein, I
6 could and would do so competently.

7 2. I am corporate Secretary of the Church of Scientology
8 International ("CSI"), a California religious corporation.

9 3. I have reviewed the photographs which are attached to
10 the declarations of Sam Brown and Thorn Smith, Exhibits D
11 and I to the Supplemental Memorandum in Support of Motion to
12 Dismiss the Complaint. I recognize the individual in the
13 photographs attached to the Smith declaration as John Koresko
14 and the individual in the photographs attached to the Brown
15 declaration as Gerald Armstrong.

16 4. I am well familiar with Gerald Armstrong, as I have
17 worked in the legal department of CSI since 1984, and prior to
18 that in the legal department of Church of Scientology of
19 California ("CSC"). I have actively followed the events
20 occurring during that time in lawsuit against Gerald Armstrong
21 by CSC regarding his theft of private documents belonging to
22 the Founder of the Scientology religion.

23 5. I am also well familiar with John Koresko, who was
24 office manager and later a paralegal for Joseph A. Yanny,
25 CSI's former attorney, during the time that Yanny represented
26

27 ///

28 ///

1 CSI and afterwards, when CSI and CSC sued Yanny for his
2 breaches of fiduciary duties.

3 6. That Armstrong is amenable to the kind of covert
4 representation in which Yanny is engaging in this case is
5 highlighted by his recorded remarks made in November 1984. At
6 that time, Armstrong was plotting against the Scientology
7 Churches and seeking out staff members in the Church who would
8 be willing to assist him in overthrowing Church leadership. The
9 Church obtained information about Armstrong's plans and,
10 through a police-sanctioned investigation, provided Armstrong
11 with the "defectors" he sought. On November 30, 1984, Armstrong
12 met with one Michael Rinder, an individual whom Armstrong
13 thought to be one of his "agents" (but who in reality was loyal
14 to the Church). In the conversation, recorded with written
15 permission from law enforcement, Armstrong stated the following
16 in response to questions by Mr. Rinder as to whether they had
17 to have actual evidence of wrongdoing to make allegations
18 against the Church leadership:

19 ARMSTRONG: They can allege it. They can allege
20 it. They don't even have -- they can allege it.

21 RINDER: So they don't even have to -- like -- they
22 don't have to have the document sitting in front
23 of them and then --

24 ARMSTRONG: Fucking say the organization destroys
25 the documents.

26 * * *

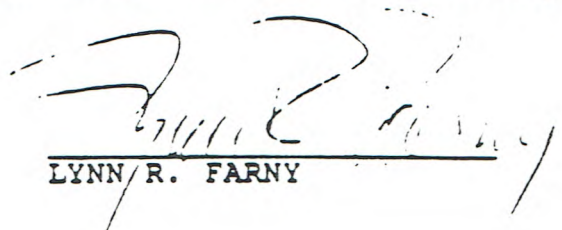
27 Where are the -- we don't have to prove a goddamn
28 thing. We don't have to prove shit; we just have

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to allege it.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed in Los Angeles, California the 26th day of August 1991.



LYNN R. FARNY

DECLARATION OF LAURIE J. BARTILSON

I, LAURIE J. BARTILSON, hereby declare and state:

1. I am co-counsel of record for defendants in the case of Aznaran v. Church of Scientology of California, et al., Case No. CV 88-1786 JMI(Ex). I have personal knowledge of the matters set forth herein and, if called upon to do so, could and would competently testify thereto.

2. On August 19, 1991, I called the offices of Ford Greene, counsel for plaintiffs in this case, to arrange to have a courier pick up several oppositions which plaintiffs were due to file that day.

3. The person who answered the telephone in Mr. Greene's office identified himself as Gerald Armstrong. When queried, Armstrong stated that he was at Greene's office "helping out." I recognized Armstrong's voice as well, as I attended his deposition in another case. Armstrong is a long-term litigation adversary of some of the defendants, in a case which was settled in 1986.

4. On Friday, August 30, 1991, I received a telephone call from Gerald Armstrong. He stated that he was calling me for Ford Greene, and asked me to provide additional copies of papers and exhibits, claiming that it was difficult to tell the

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1 identity of persons in some of the pictures that were exhibits.

2 I declare under the penalties of perjury under the laws of
3 California and the United States of America that the foregoing
4 is true and correct.

5 Executed this 3rd day of September, 1991, at Los Angeles,
6 California.

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8 LAURIE J. BARTILSON
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DECLARATION OF AUGUST MURPHY

1
2 I, AUGUST MURPHY, declare and state:

3 1. I am over the age of eighteen. I have personal
4 knowledge of the facts set forth below, and if called upon to do
5 so, could competently testify to those facts.

6 2. On August 19, 1991, I went to the law offices of Ford
7 Greene to pick up service copies of documents in the case of
8 Aznaran et al. v. Church of Scientology of California et
9 al., Case No. CV 88-1786 JMI (Ex).

10 3. I arrived at Mr. Greene's offices at approximately
11 3:30 p.m. I looked in the door to the office, and observed a
12 man and a woman sleeping on the floor, underneath a single
13 blanket.

14 4. I began looking for Mr. Greene. After a few minutes,
15 he came around the side of the building. He explained to me
16 that the copies were not yet ready, and would be done around
17 5:00 p.m. I told him that I would get a bite to eat and come
18 back, rather than drive all the way back to the city.

19 5. When I returned to Mr. Greene's office at 5:00 p.m.,
20 the door was still locked, and the man and woman were still
21 asleep on the floor. I knocked, and they just shrugged at me.
22 I went outside to the front of the building, and Mr. Greene
23 came out. He said that the papers still were not finished being
24 copied, and that I should come back at 7:30 p.m.

25 6. When I returned at 7:30, the man who had been sleeping
26 opened the door at my knock. He told me that Mr. Greene had
27 gone to dinner, and that the copier had broken down. I asked
28

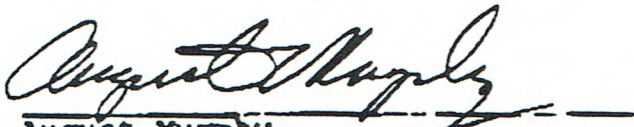
1 him his name, and he said that it was Gerald Armstrong. He told
2 me to come back at 9:00 p.m.

3 7. I returned to Mr. Greene's office yet again at 9:00
4 p.m. Armstrong came in while I was waiting, and said that he
5 was going to Kinko's to pick up the copies. He left, and I
6 waited with Mr. Greene.

7 8. At approximately 9:35, Armstrong came in with a large
8 box of documents which he took into a back room. Armstrong and
9 Greene then put together a set of documents, which they gave to
10 me.

11 I declare under penalty of perjury under the laws of the
12 State of California and the United States of America that the
13 foregoing is true and correct.

14 Executed at San Francisco, California, the 4th day of
15 September, 1991.

16 
17 August Murphy

Declaration of Gerald Armstrong

I, Gerald Armstrong, declare:

1. I have been advised by attorney Joseph A. Yanny that he has been sued by one or more Scientology entities, hereinafter referred to as "the organization," for inducing me to breach a settlement agreement I entered into with the organization in December 1986. I am making this declaration to show that this allegation is in every respect untrue.

2. I received a telephone call from Mr. Yanny to my answering machine on or about July 10, 1991. He left a message which simply said, "I need your help." I

called him back at which time he reiterated his request for my help and explained that because of organization machinations (which have been detailed in other declarations by other parties), Rick and Vicki Azmaran, plaintiffs and counter-defendants against the organization had been induced to fire their attorney, Ford Greene, and that Mr. Yanny had come into the case to ensure they had legal representation. Mr. Yanny also expressed during this conversation some personal concerns, which will remain private and confidential

between Mr. Yarny and me.

3. I told Mr. Yarny at that time that I would help and that I would travel to Los Angeles on July 12. I asked him for five hundred dollars to cover my expenses, and told him he could consider it as purchase of stock in the Gerald Armstrong Corporation (TGAC). I also counseled Mr. Yarny at that time regarding his personal spiritual difficulties. (TGAC is a California Corporation in which, although it bears my name and I am its active officer,

(4)
I own no stock.)

4. I did travel to Los Angeles, did stay at Mr. Yanny's home, did work in his office on July 15 and 16, and did write and execute a declaration on July 16 giving my knowledge of the effect of the December 1986 group settlement agreements on the ability of the Azraone and other individuals victimized by the organization to obtain proper legal representation. I also discussed with Mr. Yanny literary and

(5)

artistic matters, areas of the law, as a copyright and trademark attorney, in which he has expertise. The majority of my time with Mr. Yonny concerned spiritual matters, an area in which I have expertise.

5. I refer this Court to my declarations of March 15, 1990 and December 25, 1990, and the exhibits thereto. These declarations detail the circumstances at the time of the December 1986 settlement and the many instances subsequently

6.
when I was attacked
or threatened by the
organization in violation
of the settlement agreements.
These declarations make it
very clear that I consider
I have a right to counter
the organization's attacks,
to speak out against
its policy of "fair game"
and assaults on the
basic rights of individuals,
and to assist those
whom I would depend
on for protection against
the organization's legal
and extra-legal might
and antisocial acts.
It is therefore the org-

(7)

organization itself which induced me, if I was induced by any human agency to do anything which the organization might consider a breach of the settlement agreement.

6. But more than a desire to protect myself or right the organization's unjust acts towards me, however, I helped Mr. Yanny for the simple reason that he asked. I will do the same for anyone. The organization is aware of this fact because it received my letter of

(8)

June 21, 1991, a copy of which will accompany this declaration as Exhibit 1, and acknowledged the letter's receipt in their letter of July 3, 1991, a copy of which will accompany this declaration as Exhibit 2. It is not only the right of all men to respond to requests for help, it is our essence. If I was induced, therefore, to help Mr. Yanny, or anyone else, it was our Creator who induced me. Mr. Yanny, unlike the organization, was not aware of my dedication to helping my fellow humans, did not know of my June

21, 1991 letter, so acted
in innocence. ⁽⁹⁾

7. I do not ask for
or expect a fee for my
help, although generally
I do not refuse whatever
is given me. I know
that I am sustained
completely by the Great
Coordinator Who sends to
me whenever He wants me
to help. I therefore can-
not be induced by money
or whatever anyone can
offer me.

I declare under the
pain and penalty of perjury
under the laws of the
State of California that
the foregoing is true and

(10)

correct.

Executed this 19th day
of July at New York, New
York.



Gerald Armstrong

Exhibit G

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. 56

HON. BRUCE R. GEERNAERT, JUDGE

CHURCH OF SCIENTOLOGY OF)
CALIFORNIA,)

PLAINTIFF,)

VS.)

GERALD ARMSTRONG,)

DEFENDANT.)

CASE NO. C 420 153

RECEIVED

JAN 31 1992

HUB LAW OFFICES

REPORTER'S TRANSCRIPT OF PROCEEDINGS

MONDAY, DECEMBER 23, 1991

APPEARANCES:

(SEE APPEARANCE PAGE.)

COPY

HERBERT CANNON, CSR NO. 1923
OFFICIAL REPORTER

REPRODUCED FROM THE ORIGINAL FILED IN THE COUNTY OF LOS ANGELES

1 APPEARANCES:

2 FOR THE PLAINTIFF:

MICHAEL LEE HERTZBERG, ESQ.
740 BROADWAY, FIFTH FLOOR
NEW YORK, NEW YORK 10009

3
4 WILLIAM T. DRESCHER, ESQ.
5 23679 CALABASAS ROAD
6 SUITE 388
7 CALABASAS, CA. 91302

8 FOR THE DEFENDANT:

9 TOBY PLEVIN, ESQ.
10 10700 SANTA MONICA BLVD.
11 SUITE 4-300
12 LOS ANGELES, CA. 90025

13 JOSEPH A. YANNY, ESQ.
14 1925 CENTURY BOULEVARD
15 SUITE 1260
16 LOS ANGELES, CA. 90067
17
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1 LOS ANGELES, CALIFORNIA; MONDAY, DECEMBER 23, 1991; 10:30 A.M.

2 DEPARTMENT NO. 56 HON. BRUCE R. GEERNAERT, JUDGE

3 APPEARANCES: (SEE TITLE PAGE.)

4 (HERBERT CANNON, OFFICIAL REPORTER.)

5

6 THE COURT: THE CHURCH OF SCIENTOLOGY VERSUS ARMSTRONG.

7 STATE YOUR APPEARANCES, PLEASE.

8 MR. HERTZBERG: MICHAEL LEE HERTZBERG, H-E-R-T-Z-B-E-R-G,

9 FOR THE MOVING PARTY, YOUR HONOR.

10 MR. DRESCHER: WILLIAM DRESCHER, D-R-E-S-C-H-E-R, ALSO

11 ON BEHALF OF THE MOVING PARTY, YOUR HONOR.

12 MS. PLEVIN: TOBY L. PLEVIN FOR GERALD ARMSTRONG, YOUR

13 HONOR.

14 MR. YANNY: JOSEPH YANNY, INTERVENOR OR PROPOSED

15 INTERVENOR.

16 JUST AS A MATTER OF COURTESY, MR. HERTZBERG

17 DROPPED THAT IN THE AISLEWAY.

18 MR. HERTZBERG: IT WAS A PIECE OF PAPER THAT WAS THROWN

19 AT ME.

20 I AM CONCENTRATING ON THIS ORAL ARGUMENT, YOUR

21 HONOR. THIS IS NOT --

22 THE COURT: DO YOU KNOW WHAT IT IS?

23 MR. HERTZBERG: NO, YOUR HONOR.

24 I DO KNOW WHEN I WENT TO READ THE CALENDAR ON

25 THE HALLWAY A GENTLEMAN APPROACHED ME AND SAID HE HAD SOME-

26 THING FOR ME.

27 MR. YANNY: IT IS A DEPOSITION SUBPOENA, YOUR HONOR.

28 MR. HERTZBERG: LET ME FINISH.

1 OPENING UP A WHOLE NEW AREA HERE OF JUDICIAL HEARINGS WHERE
2 THERE IS NO RIGHT TO A JURY, FOR EXAMPLE, AND --

3 MS. PLEVIN: AS IN THIS CASE.

4 MR. YANNY: THE PUBLIC DOES NOT HAVE ACCESS.

5 THE COURT: SO BASICALLY, I AM CONCLUDING, I THINK,
6 THAT 664.6 DOES NOT GRANT THIS COURT JURISDICTION OVER MR.
7 ARMSTRONG PERSONALLY OR JURISDICTION TO, QUOTE, ENFORCE THE
8 AGREEMENT; NOR DOES 127(A)4 IN THAT THERE NEVER WAS AN ORDER
9 BY JUDGE BRECKENRIDGE REQUIRING THE PARTIES TO PERFORM THE
10 AGREEMENT.

11 MY BELIEF IS THAT HAD HE BEEN ASKED TO DO SO,
12 HE WOULD HAVE DECLINED EVEN ON PAIN OF HAVING THE SETTLEMENT
13 BLOW UP BECAUSE THAT IS JUST ANOTHER FOUR LAWSUITS WAITING
14 TO HAPPEN, IN MY EXPERIENCE, WHEN YOU HAVE AN AGREEMENT
15 LIKE THIS.

16 MR. HERTZBERG: I TAKE IT YOUR HONOR IS DENYING OUR
17 MOTION, THEN, ON THE BASIS OF LACK OF JURISDICTION?

18 THE COURT: I THINK THAT IS WHAT IT COMES DOWN TO.

19 SO THE MINUTE ORDER WILL SHOW THAT THE MOTION
20 IS DENIED.

21 MR. YANNY: THERE IS ONE OTHER MATTER, YOUR HONOR.

22 THE COURT: THIS FIRST MOTION IS DENIED ON THE BASIS
23 THAT JUDGE BRECKENRIDGE DID NOT SIGN AN ORDER OR MAKE AN
24 ORDER REQUIRING THE PARTIES TO PERFORM THE DOCUMENT ENTITLED
25 "MUTUAL RELEASE OF ALL CLAIMS AND SETTLEMENT AGREEMENT";
26 NOR DID JUDGE BRECKENRIDGE SIGN ANY ORDER RESERVING JURIS-
27 DICTION INS THE COURT IN THIS CASE TO ENFORCE SAID AGREEMENT.

28 THE COURT IS AWARE THAT THE PARTIES STIPULATED

1 IN THERE, QUOTE, JOINT STIPULATION OF DISMISSAL, END QUOTE,
2 PAGE 2, LINES 5 AND 6, QUOTE, THIS COURT SHALL RETAIN
3 JURISDICTION AND MAY REOPEN THIS CASE AT ANY TIME FOR THE
4 PURPOSE OF ENFORCING SAID AGREEMENT, END QUOTE.

5 AND, FURTHER, IT APPEARS THAT JUDGE BRECKEN-
6 RIDGE MAY HAVE BEEN AWARE OF THAT AGREEMENT BETWEEN THE
7 PARTIES; BUT IT NEVERTHELESS, APPEARS THAT JUDGE BRECKEN-
8 RIDGE WAS NOT ASKED TO AND DID NOT ORDER THE PARTIES TO
9 PERFORM THE AGREEMENT; NOR DID HE ORDER CONTINUING JURIS-
10 DICTION AS THE PARTIES EVIDENTLY DESIRED HIM TO DO.

11 THE MOVING PARTY ASSERTS THAT THIS COURT HAS
12 JURISDICTION TO GRANT THIS MOTION PURSUANT TO CCP 127(A)4.

13 ARE YOU RELYING ON CCP 127(A)4?

14 MR. HERTZBERG: AND ALSO 664.6.

15 THE COURT: WE'LL GET TO THAT IN A MINUTE.

16 DO YOU HAVE IT THERE? MAY I SEE IT?

17 MR. HERTZBERG: WE HAVE IT IN TWO PLACES. WE HAD IT
18 MISCITED, YOUR HONOR, IN ONE PAPER.

19 MS. PLEVIN: THE TEXT OF 127(A)4, YOUR HONOR, IS ON
20 PAGE 2 OF MR. ARMSTRONG'S SUPPLEMENTAL OPPOSITION TO THE
21 JURISDICTIONAL ISSUE.

22 MR. HERTZBERG: I THINK WE CITED IT AS -- I BELIEVE
23 THIS IS THE CORRECT TEXT.

24 THE COURT: THAT IS WHAT THREW ME A LITTLE BIT.

25 SO YOU CITED IT AS 128(A)4; IN ANY EVENT, IT
26 PROVIDES EVERY COURT SHALL HAVE THE POWER TO DO ALL THE
27 FOLLOWING ... "

28 SO BACK IN THE MINUTE ORDER; HOWEVER, IT

1 REALLY IS 128(A)4. SO MAKE THAT 128(A)4; HOWEVER, CCP
2 128(A)4 RELATES TO COMPELLING OBEDIENCE TO ITS JUDGMENTS,
3 ORDERS AND PROCESS. AND AS INDICATED, THERE IS NO SUCH
4 JUDGMENT OR ORDER HEREIN.

5 DURING THE PROCEEDINGS MOVING PARTY ALSO
6 RELIED UPON SECTION 664.6 OF THE CODE OF CIVIL PROCEDURE;
7 HOWEVER, IT APPEARS THAT ON DECEMBER 11, 1986 THIS ACTION
8 WAS DISMISSED WITH PREJUDICE. THEREFORE, THIS COURT LACKS
9 JURISDICTION UNDER 664.6 OF THE CODE OF CIVIL PROCEDURE
10 SINCE THIS SECTION CEASES TO BE A JURISDICTIONAL BASIS AFTER
11 ENTRY OF JUDGMENT OR JUDGMENT OF DISMISSAL FOR THE REASONS
12 AND ON THE GROUNDS SET FORTH IN THE NOTES OF THE OFFICIAL
13 COURT REPORTER.

14 NOW, TURNING TO THE YANNY MOTION.

15 MR. HERTZBERG: I JUST WANTED THE RECORD TO REFLECT
16 THAT WE OBJECT TO THIS GROUND FOR DENYING THE MOTION, FOR
17 DISMISSING THE MOTION, JUST FOR THE RECORD SO THE RECORD IS
18 ABSOLUTELY CLEAR.

19 THE COURT: ALSO ON CALENDAR THE MOTION OF JOSEPH A.
20 YANNY FOR LEAVE TO INTERVENE IN THE PENDING ACTION AND FOR
21 ACCESS TO SEALED FILES.

22 I AM GOING TO CONSIDER THIS NOT AS A MOTION
23 TO INTERVENE AS A PARTY PLAINTIFF OR DEFENDANT, BUT A MOTION
24 SEEKING ACCESS TO DOCUMENTS SEALED UNDER COURT ORDER.

25 AND THAT ELIMINATES A LOT OF THE ARGUMENT
26 AS TO THE TECHNICALITIES OF FILING OF A COMPLAINT IN INTER-
27 VENTION AS SUCH.

28 ACTUALLY, IN YOUR PAPERS, MR. YANNY, YOU ALSO

Exhibit H

FILED

MAR - 5 1992

HOWARD HANSON
MARIN COUNTY CLERK
By M. Cooper, Deputy

1 Andrew H. Wilson
WILSON, RYAN & CAMPILONGO
2 235 Montgomery Street
Suite 450
3 San Francisco, California 94104
(415) 391-3900

4 Laurie J. Bartilson
5 BOWLES & MOXON
6255 Sunset Boulevard
6 Suite 2000
Hollywood, California 90028
7 (213) 661-4030

8 Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY INTERNATIONAL
9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 FOR THE COUNTY OF MARIN

12 CHURCH OF SCIENTOLOGY)
INTERNATIONAL, a California)
13 not-for-profit religious)
corporation;)
14)
Plaintiff,)
15)
vs.)
16)
GERALD ARMSTRONG; DOES 1)
17 through 25, inclusive,)
18)
Defendants.)
19

Case No. 152229
TEMPORARY RESTRAINING ORDER

20 Plaintiff's application for a Temporary Restraining Order was
21 heard by the Court on this 3rd day of March, 1992, and good cause
22 appearing therefor,

23 IT IS HEREBY ORDERED:

24 1. Pending the hearing on Plaintiff's Motion for a
25 Preliminary Injunction, to be heard by the Court on March 20, 1992
26 at 9:00 a.m., Defendant Gerald Armstrong ("Armstrong" or
27 "Defendant"), his agents ~~and all those acting in concert with him,~~
28 are hereby temporarily enjoined from violation of that certain

WILSON, RYAN & CAMPILONGO
San Francisco, California 94104

1 Settlement Agreement ("Agreement") dated December 6, 1986, including
2 the following:

3 2. Armstrong is restrained from violating Paragraph 7(d)
4 which prohibits Armstrong from creating or publishing books or
5 magazine articles, disclosing his experiences with Scientology, and
6 any knowledge or information he may have concerning the Church of
7 Scientology, L. Ron Hubbard, or any of the organizations listed in
8 Paragraph 1 of the Agreement ("Scientology organizations")
9 affiliated therewith, disclosing documents identified in Exhibit A
10 to the Settlement Agreement, including films, tapes, photographs,
11 recordings or variations or copies of any such materials which
12 concern or relate to the religion of Scientology, L. Ron Hubbard or
13 any of the Scientology organizations;

14 3. Defendant is restrained from violating the provisions of
15 Paragraph 7(g) which prohibits Defendant from voluntarily assisting
16 or cooperating with any person adverse to Scientology in any
17 proceeding against any of the Scientology organizations, or from
18 cooperating in any manner with any organizations aligned against
19 Scientology;

20 4. Defendant is restrained from violating the provisions of
21 Paragraph 7(h) which prohibits Defendant from testifying or
22 participating in judicial or administrative proceedings adverse to
23 Scientology or any of the Scientology organizations unless compelled
24 to do so by subpoena or lawful process;

25 5. Defendant is restrained from violating the provisions of
26 Paragraph 10, which prohibits Defendant from assisting or advising
27 anyone, including individuals, partnerships, associations,
28 corporations, or governmental entities contemplating any claim or

1 engaged in litigation or involved in or contemplating any activity
2 adverse to the interests of any of the Scientology organizations;

3 6. Defendant is restrained from violating the provisions of
4 Paragraph 18(d), which prohibits Defendant from disclosing the
5 contents of the Agreement;

6 7. Nothing in this Order shall be construed to prohibit
7 Armstrong from working in the employ of, or as an independent
8 contractor for, Ford Greene on matters not involving the Church of
9 Scientology International or any of the Scientology organizations.

10 DATED: 3 / 5, 1992.

MICHAEL B. DUFFINCY

JUDGE OF THE SUPERIOR COURT

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FILED

MAR 24 1992

HOWARD HANSON
MARIN COUNTY CLERK
By A. Cooper, Deputy

1 Andrew H. Wilson
WILSON, RYAN & CAMPILONGO
2 235 Montgomery Street
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3 San Francisco, California 94104
(415) 391-3900

4 Laurie J. Bartilson
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6 Suite 2000
Hollywood, California 90028
7 (213) 661-4030

8 Attorneys for Plaintiff
9 CHURCH OF SCIENTOLOGY INTERNATIONAL

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF MARIN

12 CHURCH OF SCIENTOLOGY)
INTERNATIONAL, a California)
13 not-for-profit religious)
corporation;)

14 Plaintiff,)

15 vs.)

16 GERALD ARMSTRONG; DOES 1)
17 through 25, inclusive,)
18 Defendants.)

Case No. 152229

ORDER RE DEFENDANT'S
MOTION TO DISMISS OR STAY
OR TRANSFER TO LOS ANGELES
SUPERIOR COURT

19
20 Defendant's motion for a change of venue was heard on March 20,
21 1992 at 9:00 a.m. in the above-entitled Court. Plaintiff was
22 represented by Wilson, Ryan and Campilongo, Andrew H. Wilson
23 appearing, and by Bowles and Moxon, Laurie J. Bartilson appearing.
24 Defendant was represented by Ford Greene.

25 Whereas, the Honorable Bruce R. Geernaert of the Los Angeles
26 Superior Court, having replaced Paul G. Breckenridge, Jr., in Church
27 of Scientology of California v. Gerald Armstrong, Los Angeles
28 Superior Court Case No. C 420 153, narrowly ruled on December 23,

WILSON, RYAN & CAMPILONGO
235 Montgomery Street, Suite 450
San Francisco, California 94104

1 2. This Court's order of March 5, 1992 is hereby extended ^{or further order of the court} ~~to~~
2 through and including the earlier of May 4, 1992 ~~or the date that a~~
3 ~~preliminary injunction is granted or denied by the Los Angeles~~ ^{FB}

4 ~~Superior Court.~~ Defendant Gerald Armstrong and his agents are
5 hereby enjoined from violation of that certain Settlement Agreement
6 ("Agreement") dated December 6, 1986, including the following:

7 a. Armstrong is restrained from violating Paragraph 7(d)
8 which prohibits Armstrong from creating or publishing books or
9 magazine articles, disclosing his experiences with Scientology, and
10 any knowledge or information he may have concerning the Church of
11 Scientology, L. Ron Hubbard, or any of the organizations listed in
12 Paragraph 1 of the Agreement ("Scientology organizations")
13 affiliated therewith, disclosing documents identified in Exhibit A
14 to the Settlement Agreement, including films, tapes, photographs,
15 recordings or variations or copies of any such materials which
16 concern or relate to the religion of Scientology, L. Ron Hubbard or
17 any of the Scientology organizations;

18 b. Defendant is restrained from violating the provisions
19 of Paragraph 7(g) which prohibits Defendant from voluntarily
20 assisting or cooperating with any person adverse to Scientology in
21 any proceeding against any of the Scientology organizations, or from
22 cooperating in any manner with any organizations aligned against
23 Scientology;

24 c. Defendant is restrained from violating the provisions
25 of Paragraph 7(h) which prohibits Defendant from testifying or
26 participating in judicial or administrative proceedings adverse to
27 Scientology or any of the Scientology organizations unless compelled
28 to do so by subpoena or lawful process;

1 1991 that pursuant to Code of Civil Procedure sections 127(a)(4) and
2 664.4 he did not have jurisdiction to enforce the Mutual Release of
3 All Claims and Settlement Agreement executed December 6, 1986; and

4 Whereas, Paragraph 20 of said Agreement is nevertheless
5 effective as a forum selection clause which this court may enforce
6 under Smith v. Superior Court (1986); and

7 Having reviewed the written arguments and evidence submitted by
8 the parties, and having heard the arguments of counsel,

9 It is therefore ORDERED as follows:

10 1. Defendant's motion to transfer the file in Marin County
11 Superior Court Case No. 152229 is GRANTED.

12 a. It is FURTHER ORDERED that the file herein shall be
13 transferred to James H. Dempsey, Executive Officer and Clerk of the
14 superior court of Los Angeles, 111 North Spring Street, Los Angeles,
15 California, 90012 immediately after the expiration of twenty (20)
16 days of the date of this Order as required by Code of Civil
17 Procedure sections 399 and 400, the parties hereto waiving the
18 written notice required by Code of Civil Procedure Section 400.

19 b. It is FURTHER ORDERED that pursuant to Code of Civil
20 Procedure section 399 Plaintiff shall pay the costs of transfer of
21 the file to Los Angeles Superior Court.

22 c. It is FURTHER ORDERED that this Court shall retain
23 jurisdiction to determine, upon noticed motion, whether Defendant
24 should be awarded fees and costs in connection with the bringing of
25 the Motion to Transfer and to enforce, if necessary, Paragraphs 2.b.
26 through f. until the earlier of May 4, 1992 or the date a
27 preliminary injunction motion is appealed or denied in the Los
28 Angeles Superior Court.

1 d. Defendant is restrained from violating the provisions
 2 of Paragraph 10, which prohibits Defendant from assisting or
 3 advising anyone, including individuals, partnerships, associations,
 4 corporations, or governmental entities contemplating any claim or
 5 engaged in litigation or involved in or contemplating any activity
 6 adverse to the interests of any of the Scientology organizations;

7 e. Defendant is restrained from violating the provisions
 8 of Paragraph 18(d), which prohibits Defendant from disclosing the
 9 contents of the Agreement;

10 f. Nothing in this Order shall be construed to prohibit
 11 Armstrong from working in the employ of, or as an independent
 12 contractor for, Ford Greene on matters not involving the Church of
 13 Scientology International or any of the Scientology organizations.

14 DATED 3/24, 1992. MICHAEL B. DUFFICY
 15 JUDGE OF THE SUPERIOR COURT

16 Approved as to form:

17
 18 _____
 19 Ford Greene, Esq.
 20 Attorney for Defendant Gerald
 21 Armstrong

DATE: 3/27/92 COURT MET AT _____ DEPARTMENT NO. 4

PRESENT: HON. Michael B. Dufficy JUDGE Plooper DEPUTY CLERK _____
 REPORTER _____ BAILIFF _____

TITLE: Church of Scientology of International
 vs. Gerald Armstrong, et al.

COUNSEL: Ex Parte

NATURE OF PROCEEDINGS: Order Regarding Further Hearings & Signing of Further Documents ACTION NO. 152229

The above entitled case came before the Court on motions, 2 of which were Motion to Transfer to Los Angeles County & Motion for Preliminary Injunction.

The Court granted the motion to Transfer and granted an extension of 45 days on the Preliminary Injunction. All remaining motions were to be heard in Los Angeles County.

Pursuant to that order, no further orders are to be submitted to this Court and there will be no further hearings scheduled regarding this matter.

cc: A. Wilson
 L. Bartilson
 F. Brown
 Intervener, Mr. Berg

SUPERIOR COURT OF CALIFORNIA , COUNTY OF LOS ANGELES

Date: May 28, 1992
 Honorable Ronald M. Sohigian, Judge
 1

M. Cervantes, Deputy Clerk
 None (E.R.M.)

BC 052395

(Parties and Counsel checked if present)

Church of Scientology, International
 vs.

Counsel For
 Plaintiff

Gerald Armstrong, et al.

Counsel For
 Defendant

No Appearances

NATURE OF PROCEEDINGS: RULING ON MATTER TAKEN UNDER SUBMISSION ON MAY 27, 1992

In this matter heretofore taken under submission on May 27, 1992, the court now makes the following ruling.

1 Plaintiff's legal remedies are inadequate insofar as the scope of relief ordered below is concerned, but not otherwise. CCP 526(4) and (5).

2 The threatened acts which are restrained by the order referred to below, but only those threatened acts, would do irreparable harm to plaintiff which could not be compensated by monetary damages. CCP 526(2).

3 On the basis of the instant record, there is a reasonable probability that plaintiff will prevail after trial of this case in the respects restrained by this order. CCP 526(1); cf., San Francisco Newspaper Printing Co., Inc. vs. Superior Court (Miller) (1985) 170 Cal. App. 3d 438.

4 Plaintiff is likely to suffer greater injury from denial of the preliminary injunction the terms of which are set out below than the injury which defendant is likely to suffer if it is granted. See Robbins vs. Superior Court (County of Sacramento) (1985) 38 Cal. 3d 199, 206.

5 The granting of a preliminary injunction in the terms set out below will preserve the status quo pending trial.

SUPERIOR COURT OF CALIFORNIA , COUNTY OF LOS ANGELES

Date: May 28, 1992
 Honorable Ronald M. Schigian, Judge
 1a

M. Cervantes, Deputy Clerk
 None (E.R.M.)

BC 052395

(Parties and Counsel checked if present)

Church of Scientology, International

Counsel For
Plaintiff

vs.

Gerald Armstrong, et al.

Counsel For
Defendant

No Appearances

NATURE OF PROCEEDINGS: RULING ON MATTER TAKEN UNDER SUBMISSION ON MAY 27, 1992

6 Application for preliminary injunction is granted in part, in the following respects only.

Defendant Gerald Armstrong, his agents, and persons acting in concert or conspiracy with him (excluding attorneys at law who are not said defendant's agents or retained by him) are restrained and enjoined during the pendency of this suit pending further order of court from doing directly or indirectly any of the following:

Voluntarily assisting any person (not a governmental organ or entity) intending to make, intending to press, intending to arbitrate, or intending to litigate a claim against the persons referred to in sec. 1 of the "Mutual Release of All Claims and Settlement Agreement" of December, 1986 regarding such claim or regarding pressing, arbitrating, or litigating it.

Voluntarily assisting any person (not a governmental organ or entity) arbitrating or litigating a claim against the persons referred to in sec. 1 of the "Mutual Release of All Claims and Settlement Agreement" of December, 1986.

The court does not intend by the foregoing to prohibit defendant Armstrong from: (a) being reasonably available for the service of subpoenas on him; (b) accepting service of subpoenas on him without physical resistance, obstructive tactics, or flight; (c) testifying fully and fairly in response to properly put questions either in deposition, at trial, or in other legal or arbitration proceedings; (d) properly reporting or disclosing to authorities criminal conduct of the persons referred to in sec. 1 of the "Mutual Release of All Claims and Settlement Agreement" of December, 1986; or (e) engaging in gainful employment rendering clerical or paralegal services not contrary to the terms and conditions of this order.

SUPERIOR COURT OF CALIFORNIA , COUNTY OF LOS ANGELES

Date: May 28, 1992
Honorable Ronald M. Schigian, Judge
1b

M. Cervantes, Deputy Clerk
None (E.R.M.)

BC 052395

(Parties and Counsel checked if present)

Church of Scientology, International

Counsel For Plaintiff

vs.

Gerald Armstrong, et al.

Counsel For Defendant

No Appearances

NATURE OF PROCEEDINGS: RULING ON MATTER TAKEN UNDER SUBMISSION ON MAY 27, 1992

The application for preliminary injunction is otherwise denied.

7 The restraints referred to in sec. 6, above, will become effective upon plaintiff's posting an undertaking in the sum of \$70,000 pursuant to CCP 529(a) by 12:00 noon on June 5, 1992.

8 The restraints referred to in sec. 6, above, properly balance and accommodate the policies inherent in: (a) the protectable interests of the parties to this suit; (b) the protectable interests of the public at large; (c) the goal of attaining full and impartial justice through legitimate and properly informed civil and criminal judicial proceedings and arbitrations; (d) the gravity of interest involved in what the record demonstrates defendant might communicate in derogation of the contractual language; and (e) the reasonable interpretation of the "Mutual Release of All Claims and Settlement Agreement" of December, 1986. The fair interpretation of all the cases cited by the parties indicates that this is the correct decisional process. The law appropriately favors settlement agreements. Obviously, one limitation on freedom of contract is "public policy"; in determining what the scope of the public policy limitation on the parties' rights to enforcement of their agreement in the specific factual context of this case, the court has weighed the factors referred to in the first sentence of this section. Litigants have a substantial range of contractual freedom, even to the extent of agreeing not to assert or exercise rights which they might otherwise have. The instant record shows that plaintiff was substantially compensated as an aspect of the agreement, and does not persuasively support defendant's claim of duress or that the issues involved in this preliminary injunction proceeding were precluded by any prior decision.

SUPERIOR COURT OF CALIFORNIA , COUNTY OF LOS ANGELES

Date: May 28, 1992
 Honorable Ronald M. Sohigian, Judge
 1c

M. Cervantes, Deputy Clerk
 None (E.R.M.)

BC 052395

(Parties and Counsel checked if present)

Church of Scientology, International

Counsel For
Plaintiff

vs.

Gerald Armstrong, et al.

Counsel For
Defendant

No Appearances

NATURE OF PROCEEDINGS: RULING ON MATTER TAKEN UNDER SUBMISSION ON MAY 27, 1992

9 The court does not dispositively decide the underlying merits of the case except for this preliminary determination. CCP 526(1); Baypoint Mortgage Corp. vs. Crest Premium Real Estate etc. Trust (1985) 168 Cal. App. 3d 818, 823.

10 Plaintiff is ordered give written notice by mail by June 5, 1992, including in that written notice a statement regarding whether plaintiff has or has not posted the undertaking referred to in sec. 7, above, and attaching to that written notice evidence showing that the undertaking has been posted if that is the fact.

DATED: May 28, 1992.

RONALD M. SOHIGIAN

RONALD M. SOHIGIAN
 Judge of the Superior Court

A copy of this minute order is sent to counsel via United States mail this date.

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR

CHURCH OF SCIENTOLOGY INTERNATIONAL,)	No. B069450
Plaintiff and Respondent,)	(Super.Ct.No. BC052395)
v.)	
GERALD ARMSTRONG,)	
Defendant and Appellant.)	

APPEAL from an order of the Superior Court of
Los Angeles County, Ronald M. Sohigian, Judge. Affirmed.

Ford Greene and Paul Morantz for Defendant and
Appellant.

Bowles & Moxon, Karen D. Holly, Wilson, Ryan &
Campilongo, Andrew H. Wilson, Rabinowitz, Boudin, Standard,
Krinsky & Lieberman, Eric M. Lieberman, and Michael Lee
Hertzberg for Plaintiff and Respondent.

Defendant and appellant Gerald Armstrong (Armstrong) appeals from an order granting a preliminary injunction restraining Armstrong from voluntarily giving assistance to other persons litigating or intending to litigate claims against plaintiff and respondent Church of Scientology International (Church).

The injunction was granted to enforce a settlement agreement in prior litigation between Armstrong and Church. In the settlement, Armstrong agreed he would not voluntarily assist other persons in proceedings against Church.

Armstrong does not deny violating his agreement but asserts numerous reasons why his agreement should not be enforceable. We conclude that the narrowly-limited preliminary injunction, which did not finally adjudicate the merits of Armstrong's claims, was not an abuse of the trial court's discretion to make orders maintaining the status quo and preventing irreparable harm pending the ultimate resolution of the merits.

FACTUAL AND PROCEDURAL BACKGROUND

Armstrong was a member of Church between 1969 and 1981. He became an insider of high rank, familiar with Church practices and documents. He became disillusioned and left Church in 1981. When he left, he took many Church documents with him.

The Prior Action and Settlement

Church brought the prior action against Armstrong seeking return of the documents, injunctive relief against further dissemination of information contained in them, and imposition of a constructive trust. Mary Sue Hubbard, wife of Church founder L. Ron Hubbard, intervened asserting various torts against Armstrong. Armstrong filed a cross-complaint seeking damages for fraud, intentional infliction of emotional distress, libel, breach of contract, and tortious interference with contract.

Church's complaint and Hubbard's complaint in intervention were tried in 1984 by Judge Breckenridge. That trial led to a judgment, eventually affirmed on appeal, holding Armstrong's conversion of the documents was justified because he believed the conversion necessary to protect himself from Church's claims that he had lied about Church matters and L. Ron Hubbard. (Church of Scientology v. Armstrong (1991) 232 Cal.App.3d 1060, 1063, 1073.)

Armstrong's cross-complaint in that case was settled in December 1986 by the settlement agreement which is the subject of the injunction in the present case.

In the settlement agreement, the parties mutually released each other from all claims, except the then-pending appeal of Judge Breckenridge's decision on Church's complaint, which was expressly excluded. The settlement involved a number

of persons engaged in litigation against Church, all represented by Attorney Michael Flynn. As a result of the settlement, Armstrong was paid \$800,000. Armstrong's cross-complaint was dismissed with prejudice, as agreed, on December 11, 1986.

The portions of the settlement agreement most pertinent to this appeal are paragraphs 7-G, 7-H, and 10, in which Armstrong agreed not to voluntarily assist other persons intending to engage in litigation or other activities adverse to Church.^{1/}

1. "G. Plaintiff agrees that he will not voluntarily assist or cooperate with any person adverse to Scientology in any proceeding against any of the Scientology organizations, individuals, or entities listed in Paragraph 1 above. Plaintiff also agrees that he will not cooperate in any manner with any organizations aligned against Scientology. [¶] H. Plaintiff agrees not to testify or otherwise participate in any other judicial, administrative or legislative proceeding adverse to Scientology or any of the Scientology Churches, individuals or entities listed in Paragraph 1 above unless compelled to do so by lawful subpoena or other lawful process. Plaintiff shall not make himself amenable to service of any such subpoena in a manner which invalidates the intent of this provision. Unless required to do so by such subpoena, Plaintiff agrees not to discuss this litigation or his experiences with and knowledge of the Church with anyone other than members of his immediate family. As provided hereinafter in Paragraph 18(d), the contents of this Agreement may not be disclosed. [¶] . . . 10. Plaintiff agrees that he will not assist or advise anyone, including individuals, partnerships, associations, corporations, or governmental agencies contemplating any claim or engaged in litigation or involved in or contemplating any activity adverse to the interests of any entity or class of persons listed above in Paragraph 1 of this Agreement."

Paragraph 20 of the agreement authorizes its enforcement by injunction.

The Present Action

In February 1992, Church filed a complaint in the present action alleging Armstrong's violation of the settlement agreement and seeking damages and injunctive relief.

In support of its motion for a preliminary injunction, Church presented evidence that since June 1991 Armstrong had violated the agreement by working as a paralegal for attorneys representing clients engaged in litigation against Church and by voluntarily and gratuitously providing evidence for such litigation. Armstrong worked as a paralegal for Attorney Joseph Yanny, who represented Richard and Vicki Aznaran in a multimillion dollar suit against Church in federal court. Armstrong also voluntarily provided declarations for use in the Aznarans' case. Armstrong thereafter worked for Attorney Ford Greene on the Aznaran and other Church related matters.

Armstrong did not deny the charged conduct but asserted the settlement agreement was not enforceable for various reasons, primarily that it was against public policy and that he signed it under duress.

The Trial Court's Preliminary Injunction

The trial court granted a limited preliminary injunction, with exceptions which addressed Armstrong's

argument that the settlement agreement violated public policy by requiring suppression of evidence in judicial proceedings.

The court found that Armstrong voluntarily entered the settlement agreement for which he received substantial compensation, and that Armstrong was unlikely to prevail on his duress claim. The court found that Armstrong could contract as part of the settlement to refrain from exercising various rights which he would otherwise have. Balancing the interim harms to the parties, the court found that to the extent of the limited acts covered by the preliminary injunction, Church would suffer irreparable harm which could not be compensated by monetary damages, and harm for which monetary damages would be difficult to calculate. (Code Civ. Proc., § 526, subds. (a)(2), (a)(4), (a)(5).)

The court's order provides, in pertinent part:

"Application for preliminary injunction is granted in part, in the following respects only. [¶] Defendant Gerald Armstrong, his agents, and persons acting in concert or conspiracy with him (excluding attorneys at law who are not said defendant's agents or retained by him) are restrained and enjoined during the pendency of this suit pending further order of court from doing directly or indirectly any of the following: [¶] Voluntarily assisting any person (not a governmental organ or entity) intending to make, intending to press, intending to arbitrate, or intending to litigate a claim against the persons

referred to in sec. 1 of the 'Mutual Release of All Claims and Settlement Agreement' of December, 1986 regarding such claim or regarding pressing, arbitrating, or litigating it. [¶]

Voluntarily assisting any person (not a governmental organ or entity) arbitrating or litigating a claim against the persons referred to in sec. 1 of the 'Mutual Release of All Claims and Settlement Agreement' of December, 1986."

The court provided the following exceptions to address Armstrong's public policy arguments: "The court does not intend by the foregoing to prohibit defendant Armstrong from: (a) being reasonably available for the service of subpoenas on him; (b) accepting service of subpoenas on him without physical resistance, obstructive tactics, or flight; (c) testifying fully and fairly in response to properly put questions either in deposition, at trial, or in other legal or arbitration proceedings; (d) properly reporting or disclosing to authorities criminal conduct of the persons referred to in sec. 1 of the 'Mutual Release of All Claims and Settlement Agreement' of December, 1986; or (e) engaging in gainful employment rendering clerical or paralegal services not contrary to the terms and conditions of this order."

/

/

/

/

DISCUSSION

The grant of a preliminary injunction does not adjudicate the ultimate rights in controversy between the parties. It merely determines that the court, balancing the relative equities of the parties, concludes that, pending a trial on the merits, the defendant should be restrained from exercising the right claimed. The purpose of the injunction is to preserve the status quo until a final determination of the merits of the action. (Continental Baking Co. v. Katz (1968) 68 Cal.2d 512, 528.)

The court considers two interrelated factors. The first is the likelihood the plaintiff will prevail at trial. The second is the interim harm the plaintiff is likely to sustain if the injunction is denied, as compared to the harm the defendant is likely to suffer if the injunction is granted. (Cohen v. Board of Supervisors (1985) 40 Cal.3d 277, 286.)

The decision to grant or deny a preliminary injunction rests in the discretion of the trial court. Accordingly, an appellate court's review on appeal from the granting of a preliminary injunction is very limited. The burden is on the appellant to make a clear showing that the trial court abused its discretion. (IT Corp. v. County of Imperial (1983) 35 Cal.3d 63, 69; Nutro Products, Inc. v. Cole Grain Co. (1992) 3

Cal.App.4th 860, 865.) Abuse of discretion means the trial court has exceeded the bounds of reason or contravened the uncontradicted evidence. (IT Corp. v. County of Imperial, supra, 35 Cal.3d at p. 69.)

Here, the trial court's memorandum decision reflects very careful consideration of the factors relevant to the granting of a preliminary injunction. The court weighed the relative harms to the parties and balanced the interests asserted by Armstrong. The court granted a limited preliminary injunction with exclusions protecting the countervailing interests asserted by Armstrong. We find no abuse of discretion. We cannot say that the trial court erred as a matter of law in weighing the hardships or in determining there is a reasonable probability Church would ultimately prevail to the limited extent reflected by the terms of the preliminary injunction.

Although Armstrong's "freedom of speech" is affected, it is clear that a party may voluntarily by contract agree to limit his freedom of speech. (See In re Steinberg (1983) 148 Cal.App.3d 14, 18-20 [filmmaker agreed to prior restraint on distribution of film]; ITT Telecom Products Corp. v. Dooley (1989) 214 Cal.App.3d 307, 319 [employee's agreement not to disclose confidential information; "it is possible to waive even First Amendment free speech rights by contract"]; Snepp v. United States (1980) 444 U.S. 507, 509, fn. 3 [book by CIA

employee subject to prepublication clearance by terms of his employment contract].)

The exceptions in the trial court's injunction assured that the injunction would not serve to suppress evidence in legal proceedings. The injunction expressly did not restrain Armstrong from accepting service of subpoenas, testifying fully and fairly in legal proceedings, and reporting criminal conduct to the authorities. (See Philippine Export & Foreign Loan Guarantee Corp. v. Chuidian (1990) 218 Cal.App.3d 1058, 1081-1082.) This contrasts with the stipulation in Mary R. v. B. & R. Corp. (1983) 149 Cal.App.3d 308, 315-316, cited by Armstrong, which prevented a party from disclosing misconduct to regulatory authorities.

This appeal is only from the granting of a preliminary injunction which expressly did not decide the ultimate merits. As limited by the trial court here, the preliminary injunction merely restrains, for the time being, Armstrong's voluntary intermeddling in other litigation against Church, in violation of his own agreement. We decline any extended discussion of Armstrong's shotgun-style brief, which offers more than a dozen separate contentions against enforcement. It suffices to say that Armstrong has not borne his burden on appeal to demonstrate a clear abuse of discretion.

DISPOSITION

The order granting a preliminary injunction is affirmed.

NOT TO BE PUBLISHED

VOGEL (C.S.), Acting P.J.

We concur:

HASTINGS, J.

KLEIN (Brett), J.*

*Assigned by the Chairperson of the Judicial Council.

OFFICE OF THE CLERK
COURT OF APPEAL
STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT
JOSEPH A. LANE, CLERK

DIVISION: 4 DATE: 05/16/94

Bowles & Moxon
Laurie J. Bartilson
6255 Sunset Blvd
Suite 2000
Hollywood, CA. 90028

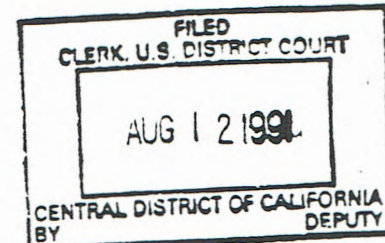
RE: Church of Scientology International
vs.
Armstrong, Gerald
2 Civil B069450
Los Angeles NO. BC052395

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13 Attorneys for Plaintiff
14 CHURCH OF SCIENTOLOGY INTERNATIONAL

15 UNITED STATES DISTRICT COURT
16 FOR THE CENTRAL DISTRICT OF CALIFORNIA

17 CHURCH OF SCIENTOLOGY)
INTERNATIONAL,)

18 Plaintiff,)

19 vs.)

20 C. PHILLIP XANTHOS; ALAN)
LIPKIN; MARCUS OWENS; MARVIN)
21 FRIEDLANDER; S. ALLEN)
WINBORNE; ROBERT BRAUER;)
22 JOSEPH TEDESCO; CHARLES)
RUMPH; RAYMOND JUCKSCH;)
23 MELVYN YOUNG; CARL CORSI;)
GREGORY ROTH; WILLIAM)
24 CONNETT; KEITH ALAN KUHN;)
CHARLES JEGLIKOWSKI; MELVIN)
25 BLOUGH; RODERICK DARLING;)
and DOES 1 - 200,)

26 Defendants.)
27)
28)

No. 91-4301 SUV(TX)

COMPLAINT FOR DAMAGES FOR AND
INJUNCTIVE RELIEF FROM:

1. FOURTH AMENDMENT VIOLATIONS;
2. FIRST AMENDMENT VIOLATIONS;
3. DUE PROCESS VIOLATIONS UNDER THE FIFTH AMENDMENT; AND
4. EQUAL PROTECTION VIOLATIONS UNDER THE FIFTH AMENDMENT

JURY TRIAL DEMANDED

JURISDICTION AND VENUE

1
2 1. As this action seeks damages for violations of
3 the United States Constitution brought under the authority of
4 Bivens v. Six Unknown Agents of Federal Bureau of Narcotics,
5 403 U.S. 388 (1971), this Court has subject matter
6 jurisdiction pursuant to 28 U.S.C. § 1331.

7 2. Venue is proper in this Court pursuant to 28 U.S.C.
8 § 1391(b) in that jurisdiction is not founded solely on
9 diversity of citizenship and the claims arose in this judicial
10 district. Venue is also proper in this Court pursuant to 28
11 U.S.C. § 1391(e) in that this is a civil action in which all
12 the defendants are or were employees of a United States agency,
13 some of whom are residents of this judicial district, which is
14 the judicial district in which plaintiff resides and in which
15 the causes of action set forth arose.

PARTIES

16
17 3. Plaintiff Church of Scientology International ("the
18 Church") is a not for profit religious corporation organized
19 and existing under the laws of the State of California, with
20 its principal place of business in Los Angeles, California. In
21 accordance with the ecclesiastical policies of the Scientology
22 religion, plaintiff is the Mother Church of the Scientology
23 religion, an internationally recognized religion engaged solely
24 in spiritual, charitable, humanitarian and community-oriented
25 endeavors intended to enhance adherents' spiritual knowledge of
26 themselves and their Creator. The Scientology religion has
27 more than 8 million members and Scientology Churches,
28 Missions and groups exist in 90 nations around the world.

1 4. Except for three who have retired from government
2 service since performing the acts hereinafter averred, the
3 defendants are, and at all relevant times were, employees of
4 the Internal Revenue Service ("IRS"). The matters averred in
5 this Complaint are largely drawn from information only recently
6 discovered by the Church in the course of Freedom of Information
7 Act ("FOIA") litigation.

8 5. As the conduct which gives rise to the Church's claims
9 of constitutional violations occurred within different divisions
10 and offices of the IRS, the defendants are grouped within their
11 respective divisions for the purposes of the following
12 identifying averments:

13 A. Los Angeles Criminal Investigation Division.

14 i. Defendant Philip Xanthos ("Xanthos") is,
15 and at all relevant times was, a Branch Chief of
16 the Los Angeles Criminal Investigation Division of
17 the IRS ("LA CID"). Upon information and belief,
18 Xanthos resides in this judicial district.

19 ii. Defendant Alan Lipkin ("Lipkin") is, and
20 at all relevant times was, a Group Manager within
21 LA CID. Upon information and belief, Lipkin
22 resides in this judicial district.

23 B. National Office Exempt Organizations.

24 i. Defendant Marcus Owens ("Owens") is
25 currently the Director of the IRS National
26 Office Exempt Organizations ("EO") Technical
27 Division, and was, at all relevant times
28 an official of the EO Technical Division. Upon

1 information and belief, Owens resides in the State
2 of Maryland.

3 ii. Defendant Marvin Friedlander
4 ("Friedlander") is, and at all relevant times was,
5 an IRS Senior Conferee Reviewer in the EO
6 Technical Division. Upon information and belief,
7 Friedlander resides in the State of Maryland.

8 iii. Defendant S. Allen Winborne ("Winborne")
9 was at all relevant times until approximately
10 1987 IRS Assistant Commissioner for Employee Plans
11 and Exempt Organizations. Upon information and belief,
12 Winborne resides in the State of Maryland.

13 iv. Defendant Robert Brauer ("Brauer") was
14 at all relevant times from approximately
15 1987 to and including approximately December, 1990, IRS
16 Assistant Commissioner for Employee Plans and Exempt
17 Organizations. Since in or about January, 1991,
18 Brauer has been the IRS District Director in
19 Pittsburgh, Pennsylvania. Upon information and
20 belief, Brauer resides in the Commonwealth of
21 Pennsylvania.

22 v. Defendant Joseph Tedesco ("Tedesco") was
23 at all relevant times until approximately 1987, Chief
24 of the National Office Exempt Organizations
25 Technical Division. Since in or about 1987,
26 Tedesco has been in retirement. Upon information
27 and belief, Tedesco resides in the Commonwealth of
28 Virginia.

1 vi. Defendant Charles Rumph ("Rumph") was
2 at all relevant times until approximately 1986,
3 an attorney in the Tax Litigation Division, Office of
4 Chief Counsel at the National Office. Although he did
5 not work in EO, plaintiff is informed and believes
6 that Rumph worked in conjunction with the other EO
7 defendants in doing the acts hereinafter averred.
8 Since in or about 1986, Rumph has been in
9 retirement. Upon information and belief, Rumph
10 resides in the District of Columbia.

11 vii. Defendant Roderick Darling ("Darling")
12 is, and at all relevant times was, an IRS tax law
13 specialist in the EO Technical Division. Upon
14 information and belief, Darling resides in the
15 State of Maryland.

16 C. Los Angeles Exempt Organizations Division.

17 i. Defendant Raymond Jucksch ("Jucksch") is,
18 and at all relevant times was, a Group Manager
19 within the Los Angeles Exempt Organizations
20 Division of the IRS ("LA EO"). Upon information
21 and belief, Jucksch resides in this judicial
22 district.

23 ii. Defendant Melvyn Young ("Young") is, and
24 at all relevant times was, a Revenue Agent within
25 LA EO. Upon information and belief, Young resides
26 in this judicial district.

27 iii. Defendant Carl Corsi ("Corsi") was at
28 all relevant times to and including

1 July, 1989, a Revenue Agent within LA EO.

2 Since in or about July, 1989, Corsi has been
3 in retirement. Upon information and belief, Corsi
4 resides in this judicial district.

5 D. Los Angeles District Counsel Office.

6 i. Defendant Charles Jeglikowski
7 ("Jeglikowski") is, and at all relevant times was,
8 an attorney within the IRS District Counsel's
9 office located in Thousand Oaks, California. Upon
10 information and belief, Jeglikowski resides in
11 this judicial district.

12 ii. Defendant Gregory Roth ("Roth") is, and
13 at all relevant times was, an attorney within the
14 IRS District Counsel's office located in Thousand
15 Oaks, California. Upon information and belief,
16 Roth resides in this judicial district.

17 E. Los Angeles District Office.

18 i. Defendant William Connett ("Connett")
19 was at all relevant times to and including
20 January, 1986, District Director of the Los
21 Angeles District Office of the IRS. Since in or
22 about 1987, Connett has been the IRS
23 Representative in Paris, France, where, on
24 information and belief, he now resides.

25 F. IRS National Office Internal Security
26 Division.

27 i. Defendant Keith Alan Kuhn ("Kuhn") is,
28 and at all relevant times was, Chief of the

1 Investigations Branch of the Internal Security
2 Division of the Office of the Chief Inspector of
3 the IRS. Upon information and belief, Kuhn
4 resides either in the State of Maryland or the
5 Commonwealth of Virginia.

6 G. St. Petersburg, Florida Exempt Organizations
7 Division.

8 i. Defendant Melvin Blough ("Blough") is, and
9 at all relevant times was, a Revenue Agent within
10 the Exempt Organizations Division of the St.
11 Petersburg, Florida office of the IRS. Upon
12 information and belief, Blough resides in the
13 state of Florida.

14 6. Upon information and belief, IRS employees other than
15 those named as defendants in this action performed acts which
16 are unlawful and unconstitutional in connection with the facts
17 set forth in this complaint. The Church will seek leave of
18 Court to amend this complaint when the IRS employees not named
19 as defendants, but whose conduct warrants their inclusion as
20 defendants in this action, are identified.

21 NATURE OF PLAINTIFF'S CLAIMS

22 7. By this action, the Church seeks damages for
23 violations of its First, Fourth, and Fifth Amendment rights
24 arising from the conduct of the defendants and others within
25 the Internal Revenue Service. While this action focuses on
26 recent events, it is the culmination of three decades of IRS
27 coercion in violation of the Free Exercise Clause of the First
28 Amendment, discriminatory treatment in violation of the

SECOND CLAIM FOR RELIEF

(For First and Fifth Amendment Violations by All Defendants)

38. The Church repeats and realleges each and every averment set forth in paragraphs 1 through 35, inclusive.

39. On or about December 4, 1987, defendant Friedlander informed Church representatives that the IRS insisted upon a "limited" review of the financial records of plaintiff RTC, and CST for 1986, to be conducted by the Los Angeles District Office, for the purpose of verifying the integrity of their records and to rule out the existence of any private inurement, the only remaining potentially disqualifying factor. In early 1988, defendants Friedlander and Brauer assured plaintiff of favorable exemption determinations as long as the limited review did not uncover inurement or an inadequate accounting system.

40. Those representations were false. Documents released by the IRS in later FOIA litigation included drafts of final denial letters for plaintiff, RTC and CST written by Friedlander and Darling in January of 1988, at the very time when defendants Brauer and Friedlander were representing to Church counsel that exemption was imminent. In fact, the representations were no more than a ploy to entice plaintiff and the other Scientology Churches to continue turning over detailed information to the IRS in violation of the Church's civil and constitutional rights.

41. On March 17, 1988, the National Office provided plaintiff, RTC and CST with new letters of assurance stating that the IRS was prepared to conduct a review so that "we may

1 complete favorable consideration" of the exemption
2 applications. The letters further stated that the purpose of
3 the review was to "determine the integrity of your financial
4 and accounting systems" and "verify that no part of your net
5 earnings inures to the benefit of any private shareholder or
6 individual and that there is no other disqualifying activity."
7 Each Church executed its letter of assurance, permitting the
8 extremely unusual process of an on-site document review of
9 plaintiff's records to proceed.

10 42. Extensive, on-site reviews began, starting with CST,
11 in March of 1988. Despite the initial statement by Friedlander
12 that the review would be limited, the Los Angeles office
13 initially assigned four full-time agents to the review, and
14 after eight weeks, another four full-time agents were added.
15 This staffing represented 48 personnel weeks or roughly one
16 year of IRS time. Friedlander and his superior, defendant
17 Owens, testified that these examinations were the "most
18 sweeping" examinations these officials had witnessed, "far
19 exceeding" any they had previously experienced, and that the
20 volume of information provided was "truly record-breaking."

21 43. The examination of CST was completed on June 2, 1988.
22 At that time, the IRS Branch Chief responsible for the review
23 stated that the agents had found nothing to show inurement and
24 affirmed that, as to CST, "we have no concerns at this time."
25 These statements confirm the findings of a memorandum written by
26 defendant Friedlander in November 1987 which stated that private
27 benefit ceased to be an issue following the death of L. Ron
28 Hubbard in January 1986. Following the completion of the

1 examination to CST, the IRS Los Angeles office began its review
2 of RTC, which was completed in June 1988 -- again with no
3 concerns raised by the agents.

4 44. On June 22, 1988, the Church discovered that in May
5 1988, defendants Corsi, Young and Roth secretly interviewed two
6 disaffected Scientologists, Richard and Vicki Aznaran, who were
7 suing CSI and other Scientology churches. Prior to leaving the
8 Scientology faith in 1987, Vicki Aznaran had served as one of
9 RTC's officers. These defendants had engaged in deceitful
10 conduct designed to prevent the Churches from discovering that
11 the IRS investigation was actually proceeding on two tracks:
12 one known to the Churches, which was based ostensibly on good
13 faith cooperation between the churches and the IRS, and the
14 other which was covert and designed to undermine the progress
15 the Churches believed had been made towards the granting of
16 exempt status. The discovery of this conduct raised serious
17 concerns about whether the IRS was proceeding in good faith and
18 in accordance with the March 17, 1988 agreement. The Churches
19 immediately sought a meeting with the IRS to discuss their
20 concerns.

21 45. It was later revealed that defendant Lipkin of the
22 CID was instrumental in arranging the interview of the Aznarans
23 by the EO agents, thus demonstrating the continuing ties
24 between EO and CID. Plaintiff, RTC and CST were also not aware
25 at the time that the two senior LA EO agents in the
26 examination, defendants Young and Corsi, had met several times
27 with LA CID during the review, that defendant Lipkin had
28 briefed all of the agents involved in conducting the review,

1 and that defendants Corsi and Young had by this time received
2 and reviewed the Special Agent's Report. Thus, CID collusion
3 with LA EO did not end in 1985 when IRS District Counsel
4 rejected CID's request for prosecution, nor in 1986 when the
5 Justice Department refused to convene a grand jury.

6 46. During their interview of the Aznarans, defendants
7 Corsi, Young and Roth openly displayed their animus toward the
8 Church and the Scientology religion. The agents referred to
9 Church religious services as a "dog and pony show", and
10 referred to members of the Church as "crazy devotees".
11 Defendant Young actually encouraged the Aznarans to "take a
12 stand" against the Church. Defendant Roth compared the
13 Scientology religion to drug addiction. These actions violate
14 Internal Revenue Service policies which require an employee to
15 maintain "strict impartiality" between the taxpayer and the
16 government. These agents, who openly denigrated the
17 Scientology religion, should have been removed from any
18 examinations of Scientology churches under The Internal Revenue
19 Manual, Handbook of the Rules of Conduct which indicates that
20 an agent should be removed if his actions could lead others
21 reasonably to question the employee's impartiality. I.R.M.
22 0735.1, Handbook of Employee Responsibilities and Conduct
23 § 232.21, MT 0735.1-17 (November 26, 1986).

24 47. On June 22, 1988, plaintiff contacted IRS
25 representatives from the Los Angeles office and asked why the
26 the summonses had been issued to the Aznarans. The IRS refused
27 to discuss the interview or confirm that it had taken place.
28 Church counsel informed the IRS that the document review was

1 accordingly being suspended until the matter was resolved with
2 the National Office. On June 24, 1988, in response to a letter
3 from the Church regarding its concerns that the document review
4 was apparently being conducted in bad faith, defendant
5 Friedlander admitted that the IRS "owed [the churches] an
6 explanation."

7 48. In January of 1988, prior to the start of the on site
8 review, final adverse determinations were already drafted and
9 circulated by Friedlander and Darling. After June 27, 1988,
10 while the Churches were awaiting defendant Friedlander's
11 promised explanation, the IRS finalized the adverse
12 determination letters from the pre-existing drafts without
13 substantive amendment. On July 7, 1988, the IRS informed CST
14 that in its view the IRS had proceeded in accordance with the
15 March 17 agreement and that it viewed the suspension of the
16 audit as a termination of that agreement.

17 49. The following day, July 8, 1988, plaintiff and the
18 other Churches wrote the IRS reiterating that they had not
19 terminated the examination, but were waiting for the promised
20 explanation regarding the Aznaran interview. The letters stated
21 that the Churches did wish to fulfill the terms of the March 17,
22 1988 agreement, and that all they sought was a meeting with the
23 IRS to clarify matters before the examination procedure
24 resumed. That same day the IRS issued final adverse ruling
25 letters to all three churches denying tax-exempt status. These
26 letters were nearly identical to those drafted six months
27 earlier by Friedlander and Darling. Despite previous
28 assurances to the contrary, the denials of the applications of

1 plaintiff and RTC were based, in part, on alleged commercialism
2 in the sale of religious goods and services.

3 50. The IRS on-site review procedure was an utter sham,
4 designed not to make any good faith determination of the tax
5 exempt status of plaintiff, but merely to continue to
6 collect information which would not otherwise have been
7 provided to the IRS. The on-site reviews also included
8 examination of myriad ecclesiastical and confidential Church
9 scriptural materials and other materials concerning the
10 religious practices of the Churches which had no reasonable
11 relation to any tax exemption issue.

12 51. The defendants, and each of them, by their conduct
13 alleged herein, have singled out plaintiff because of its
14 position as Mother Church of the Scientology religion and,
15 through those acts, have invidiously discriminated against
16 plaintiff in their application of the laws of the United
17 States, in violation of the Establishment Clause of the First
18 Amendment to the United States Constitution.

19 52. The defendants, and each of them, by their conduct
20 alleged herein, have singled out plaintiff for invidious
21 discrimination in the application of the laws of the United
22 States on the basis of plaintiff's religious affiliation, in
23 violation of the Equal Protection component of the Due Process
24 Clause of the Fifth Amendment to the United States Constitution.

25 53. The conduct of the defendants, and each of them, has
26 been arbitrary and capricious, and has resulted in the
27 deprivation of plaintiff's property. Such conduct, motivated
28 by religiously rooted bias and prejudice, is a violation of the

1 Due Process Clause of the Fifth Amendment to the United States
2 Constitution. v

3 54. Plaintiff has been damaged and continues to be
4 damaged thereby in an amount to be proven at trial. That
5 amount is not presently capable of precise calculation but
6 is believed to be in excess of \$20,792,850 which represents
7 direct expenditures by plaintiff. Plaintiff has also suffered
8 consequential and resulting damages in an amount to be proven
9 at trial, but which is in an amount in excess of \$100 million.

10 THIRD CLAIM FOR RELIEF

11 (For First and Fifth Amendment Violations by All Defendants)

12 55. The Church repeats and realleges each and every
13 averment set forth in paragraphs 1 through 54, inclusive.

14 56. The IRS began additional harassive actions against
15 plaintiff and Scientology parishioners commencing in October,
16 1988, when the IRS issued letters to several Scientologist
17 taxpayers, who had claimed deductions on their tax returns for
18 money paid to their Scientology churches for religious
19 services, informing them that their cases were part of a
20 "designated tax shelter litigation project entitled
21 Scientology." Such a designation was blatantly improper and
22 demonstrated discriminatory bias and creation of a suspect
23 category of members of the Scientology religion.

24 57. Similarly, on February 14, 1989, the IRS office in
25 Laguna Niguel, California sent a letter to two Scientologists
26 concerning Church-related deductions, stating that no deduction
27 would be allowed as they had not shown that Scientology is
28 "other than a sham designed for the purpose of claiming

1 fictitious charitable contributions." This statement, too, was
2 blatantly false and the result of bias, since even the IRS has
3 repeatedly acknowledged that Scientology is a bona fide
4 religion and that Scientology churches are bona fide churches.
5 The IRS was forced to correct their files to delete these
6 references after the Scientologists who received this letter
7 prevailed in Smith v. Brady, No. CV 89-2584-RG(Bx) (C.D.
8 Cal. 1990). Indeed, the IRS acknowledged that such
9 designations were improper in a national office memorandum
10 issued in 1986, yet the IRS continued labelling Scientologists
11 as tax protestors as late as 1989.

12 58. Documents obtained in FOIA litigation reveal an
13 entire set of procedures set up for the purpose of targetting
14 the tax returns of individual Scientologists, monitoring and
15 coordinating the investigations of these individuals, and
16 falsely designating them as "tax protestors." These documents,
17 from the Los Angeles District, show that the returns of
18 Scientologists who claim deductions for their contributions to
19 the Church are designated with a special code for "Alleged
20 Contributions (incl. Scientology & Alleged Church)". This
21 code is part of the Tax Protestor Program described in the
22 Internal Revenue Manual, and allows the returns, which are
23 treated as "priority cases," to be "controlled" through the
24 IRS' nationwide computer system. A special questionnaire for
25 Scientology cases is included for use by IRS examiners. An
26 internal memo, designed to assist IRS examiners in handling
27 these cases, lists several organizations which have never even
28 existed, and claims that these are names used by the "Church of

1 scientology."

2 59. Defepdant Melvin Blough attempted to utilize the
3 Church audit procedures of 26 U.S.C. § 7611 to identify
4 thousands of parishioners of the Church of Scientology Flag
5 Service Organization ("CSFSO") for the purpose of selecting
6 their personal tax returns for audit. Blough testified that he
7 wished to obtain records from CSFSO which would: (a) identify all
8 of its parishioners for a three year period; (b) identify each
9 of the courses delivered by CSFSO and describe them; (c)
10 identify the courses taken by the parishioners; and (d) pull the
11 tax returns of a number of these individuals. Blough stated
12 that CSFSO provides courses to an estimated 8,000 parishioners a
13 year, and further claimed that the IRS would use as many agents
14 as needed to compile this information. In fact, nearly 100
15 parishioners of CSFSO have received audit notices regarding
16 their contributions to the Church since Blough announced his
17 plans. Blough also utilized the Cult Awareness Network ("CAN")
18 as a means to improperly gather information regarding the
19 Church. CAN is a modern day hate group, whose tactics include
20 kidnapping, brainwashing and beating of individuals found to be
21 guilty of holding "unacceptable" religious convictions.
22 Despite these activities, CAN was granted tax exempt status by
23 the IRS, and was used by Blough as an information gathering
24 arm, for the purpose of procuring information on individual
25 Scientologists and their businesses.

26 60. Assaults on churches of Scientology by or as a result
27 of actions by IRS personnel have not been limited to the
28 borders of the United States. William Connatt is now stationed

1 as the IRS' foreign representative in France where he has a
2 wide range of influence in European countries. Since his
3 posting there have been raids on churches of Scientology by
4 police and taxing authorities and unwarranted arrests of
5 individual Scientologists in France, Italy and Spain. When two
6 staff members of the Church of Scientology in Brussels were
7 initially denied visas to travel to the United States, this was
8 traced directly back to false information provided to the
9 consulate officials by Connett.

10 61. In an effort to harass, discredit and smear
11 plaintiff, to intimidate IRS employees who might otherwise
12 treat plaintiff fairly or disclose IRS misconduct, and to
13 evade FOIA disclosure obligations, defendant Keith Alan Kuhn has
14 begun to proliferate unsubstantiated and patently false
15 allegations against Scientology and Scientologists, which have
16 been used as a pretext to manufacture security risks to IRS
17 employees. In or about May 1990, Kuhn sent out a memorandum to
18 each of the Regional Inspectors around the country, directing
19 them to contact specifically named EO employees who were
20 working on Scientology cases. Based on scurrilous and
21 unsubstantiated charges, Kuhn directed that these EO employees
22 be told that there was a potential for harassment against them
23 from the Church, thus creating a climate where plaintiff and
24 other Scientology churches could not possibly receive unbiased
25 treatment from any EO agent throughout the country. Kuhn's
26 allegations themselves are entirely without merit. The IRS
27 filed a declaration by Kuhn which contained these charges in a
28 FOIA case brought by a Scientology Church. The District Court

1 judge in that case ordered the declaration stricken from the
2 record, describing it as "scurrilous" and "unfounded".

3 62. After the collapse of the criminal investigation and
4 after denying section 501(c)(3) exemption to plaintiff, RTC
5 and CST, the nationwide examination of exempt and nonexempt
6 Scientology Churches and entities which had been planned early
7 in 1986 was resuscitated by defendants and the IRS. A
8 three-day meeting on Scientology was convened at the IRS
9 National Office on October 19, 20 and 21, 1988 to coordinate
10 nationwide actions against various Scientology Churches,
11 including plaintiff.

12 63. That three-day meeting was ordered by defendant
13 Brauer, organized and convened by defendant Owens, and chaired
14 by defendant Friedlander. Also in attendance were:

- 15 a. EO Operations employee Tom Miller, who had
- 16 drafted the 1986 proposal to re-examine the exempt
- 17 Scientology Churches;
- 18 b. Roderick Darling;
- 19 c. LA EO Branch Chief Mel Joseph, along with
- 20 defendants Young and Corsi;
- 21 d. Defendant Blough;
- 22 e. IRS agents from at least the Brooklyn,
- 23 Baltimore, and Los Angeles Regional
- 24 offices; and
- 25 f. IRS National Office representatives.

26 64. Various strategic plans for a continued IRS campaign
27 directed at Scientology were discussed at the three-day meeting
28 in October 1988. Defendant Young prepared and delivered a

1 briefing at that conference in which he proposed that and
2 explained how the IRS could use the assessment of tax
3 liabilities under the Federal Insurance Contribution Act
4 ("FICA") and the Federal Unemployment Tax Act ("FUTA") to
5 exploit the non-exempt status of various Scientology Churches,
6 completely disregarding the fact that the Churches in question,
7 including plaintiff, had filed waivers seeking exemption
8 from those employment taxes which had been accepted by the IRS.

9 65. At that same three-day meeting, format material for
10 a nationwide campaign of examinations of exempt and non-exempt
11 Scientology Churches was distributed and discussed, and the
12 decision was made during that meeting to commence tax inquiries
13 of plaintiff, Church of Scientology Western United States
14 ("CSWUS"), Church of Scientology Flag Service Organization
15 ("CSFSO"), Founding Church of Scientology of Washington, D.C.
16 ("FCDC") and Church of Scientology of Boston ("Boston Church").
17 Those inquiries in fact did commence, upon the issuance of
18 notices of tax inquiry to those Churches which were circulated
19 during that three-day meeting.

20 66. Upon receipt of the virtually identical notices of
21 tax inquiry, plaintiff, CSWUS, CSFSO, FCDC, and the Boston
22 Church responded by pointing out inaccuracies and deficiencies
23 in the standardized, coordinated notices and, despite those
24 infirmities, responded to the questions posed by those notices.
25 In each instance, however, the IRS issued a notice of church
26 examination under the Church Audit Procedures Act, 26 U.S.C.
27 § 7611. In four of those, summonses were issued and summons
28 enforcement proceedings commenced in the appropriate district

1 court. In the CSFSO case, the matter is still pending in the
2 United States District Court for Middle District of Florida;
3 this Court, the Honorable Harry L. Hupp, presiding, quashed
4 the majority of both the summonses issued to CSWUS and
5 plaintiff; the United States District Court for the District of
6 Massachusetts quashed the summons to the Boston Church
7 outright. The FCDC examination was conducted, and despite
8 nearly two years of intrusive inquiry, the IRS declined to
9 cancel FCDC's exemption.

10 67. The coordinated examinations of those five distinct
11 churches were coupled with concurrently timed IRS activities
12 directed against other Scientology Churches and individual
13 Scientologists. These various coordinated activities against
14 Scientology are the responsibility of what defendant Owens has
15 described as "thousands of [IRS] employees in key districts and
16 district offices around the country and the National Office."
17 Those coordinated actions have also been the subject of later
18 meetings on Scientology at the IRS National Office, involving
19 as many as 40 attendees from different IRS regions and
20 divisions, in pursuit of what the SAR termed the "final halt
21 to" and "ultimate disintegration of" Scientology.

22 68. Such coordination of IRS offenses against Scientology
23 Churches and Scientologists generally also reaches down to the
24 LA District level. Since approximately July 1989, monthly
25 meetings have been held at the Pasadena, California courthouse
26 that houses the United States Court of Appeals for the Ninth
27 Circuit, to coordinate the actions of the Los Angeles EO
28 (represented at such meetings by defendant Young), Examinations

1 Division, and upon information and belief, LA CID. These
2 monthly meetings are arranged and coordinated by the Los
3 Angeles District Counsel's office, and are attended by a number
4 of District Counsel staff and, in fact, are chaired by
5 defendant Jeglikowski, who supervises the meetings and the
6 matters coordinated therein, against plaintiff and other
7 Scientology Churches in disregard of the Constitution, the
8 Internal Revenue Code, and policies set forth in the Internal
9 Revenue Code. A regular topic of these meetings has been civil
10 lawsuits involving plaintiff and other Scientology churches.
11 The cases specifically include the civil suit filed by the
12 Aznarans, and a case involving a former attorney for the
13 Church. Defendant Jeglikowski has met with an attorney for one
14 of the civil litigants, for purposes of coordinating actions
15 between the IRS and the civil litigants against plaintiff.

16 69. The monthly meetings in Pasadena, like the meetings
17 held from time to time at the National Office, are the vehicles
18 by which defendants have singled out a religion and its
19 churches and parishioners for singular and unfair treatment
20 based upon their religious affiliation and set about to
21 administer the Internal Revenue Code in a manner designed
22 specifically to affect such co-religionists in an arbitrary and
23 capricious manner, and to cause the harm hereinafter averred.

24 70. Plaintiff has made repeated efforts to resolve any
25 legitimate concerns on the part of the IRS. As shown above,
26 the Church has provided voluminous information to the IRS over
27 the years to allay any concerns and to respond to any
28 legitimate questions. These efforts on the part of the Church

1 have been either been perverted (as in the use of this
2 information for purposes of a CID investigation), or rebuffed.
3 Within the past few months, plaintiff once again attempted to
4 resolve various issues with EP/EO representatives, including
5 defendant Owens. However, the IRS continuously demanded the
6 production of voluminous quantities of documents as a
7 precondition for further talks. Most of the information
8 requested had previously been provided to the IRS over the past
9 years, yet the EP/EO representatives demanded it once again.
10 When informed that the production of documents being requested
11 on a voluntary basis was so extensive as to require months if
12 not years to review, one representative of EP/EO remarked that
13 this did not concern him, as he had twelve years left in the
14 IRS before retirement.

15 71. The defendants, and each of them, by their conduct
16 alleged herein, have singled out plaintiff for invidious
17 discrimination in the application of the laws of the United
18 States on the basis of plaintiff's religious affiliation, in
19 violation of the Equal Protection component of the Due Process
20 Clause of the Fifth Amendment to the United States Constitution.

21 72. Plaintiff has been damaged and continues to be
22 damaged thereby in an amount to be proven at trial. That
23 amount is not presently capable of precise calculation but
24 is believed to be in excess of \$20,792,850 which represents
25 direct expenditures by plaintiff. Plaintiff has also suffered
26 consequential and resulting damages in an amount to be proven
27 at trial, but which is in an amount in excess of \$100 million.

28 73. The conduct alleged herein is ongoing and, unless

1 enjoined by this Court through an order forbidding defendants
2 from any and all further participation in any matter involving
3 the IRS and plaintiff or any other Scientology Churches or any
4 other Scientology entities or parishioners, the harm alleged
5 herein will continue and the Constitutional violations will
6 persist to plaintiff's detriment.

7 FOURTH CLAIM FOR RELIEF

8 (For Fifth Amendment Violations by All Defendants)

9 74. The Church repeats and realleges each and every
10 averment set forth in paragraphs 1 through 73, inclusive.

11 75. Defendants have, in the course of conduct hereinabove
12 averred, acted in violation of the Constitution, the laws of
13 the United States, and the policies, and procedures, and
14 practices of the IRS created by the IRS for the benefit of
15 taxpayers. Such conduct is a denial of plaintiff's due process
16 rights as set forth in the Fifth Amendment to the United States
17 Constitution.

18 76. Plaintiff has been damaged and continues to be
19 damaged thereby in an amount to be proven at trial. That
20 amount is not presently capable of precise calculation but
21 is believed to be in excess of \$20,792,850 which represents
22 direct expenditures by plaintiff. Plaintiff has also suffered
23 consequential and resulting damages in an amount to be proven
24 at trial, but which is in an amount in excess of \$100 million.

25 77. The conduct alleged herein is ongoing and, unless
26 enjoined by this Court through an order forbidding defendants
27 from any and all further participation in any matter involving
28 the IRS and plaintiff or any other Scientology churches or any

1 other Scientology entities or parishioners, the harm alleged
2 herein will continue and the Constitutional violations will
3 persist to plaintiff's detriment.

4 WHEREFORE, plaintiff Church of Scientology International
5 prays that:

6 78. Defendants, and each of them, be preliminarily and
7 permanently enjoined from any and all further participation in
8 and responsibility for any matter involving the IRS and
9 plaintiff or any other Scientology Church or entity, or any
10 Scientology parishioner;

11 79. Plaintiff be awarded damages according to proof,
12 which are believed to be in excess of \$20,792,850 in
13 direct expenditures by plaintiff, and consequential and
14 resulting damages in an amount to be proven at trial, but which
15 is in an amount in excess of \$100 million, and

16 80. The Court award and order such other and further
17 relief that it deems appropriate under these circumstances.

18 Dated: August 12, 1991

Respectfully submitted,

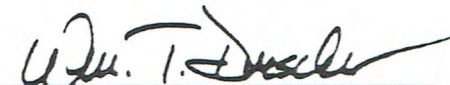
19 QUINN, KULLY AND MORROW

20 COOLEY, MANION, MOORE &
JONES, P.C.

21 BERRY & CAHALAN

22 BOWLES & MOXON

23 WILLIAM T. DRESCHER

24
25 By: 
26 William T. Drescher

27 Attorneys for Plaintiff
28 CHURCH OF SCIENTOLOGY
INTERNATIONAL

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Boulevard, Suite 2000, Los Angeles, CA 90028.

On June 14, 1994 I served the foregoing document described as SEPARATE STATEMENT OF UNDISPUTED FACTS WITH REFERENCE TO SUPPORTING EVIDENCE IN SUPPORT OF MOTION OF CROSS-DEFENDANT CHURCH OF SCIENTOLOGY INTERNATIONAL FOR SUMMARY ADJUDICATION OF GERALD ARMSTRONG; DOES THE SECOND AND THIRD CAUSES OF ACTION OF THE AMENDED CROSS-COMPLAINT on interested parties in this action,

[] by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

[X] by placing [] the original [X] true copies thereof in sealed envelopes addressed as follows:

PAUL MORANTZ
P.O. Box 511
Pacific Palisades, CA 90272

FORD GREENE
HUB Law Offices
711 Sir Francis Drake Blvd.
San Anselmo, CA 94960-1949

[X] BY MAIL

[] *I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

[X] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party

served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

Executed on June 14, 1994 at Los Angeles, California.

[] **(BY PERSONAL SERVICE) I delivered such envelopes by hand to the offices of the addressees.

Executed on _____, at Los Angeles, California.

[X] (State) I declare under penalty of the laws of the State of California that the above is true and correct.

[] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Print or Type Name

Signature

* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

** (For personal service signature must be that of messenger)